

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

Agency Name

Division

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**173-9-09**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Immunity from negligent hiring, certification, or provider agreements.****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? **No**
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, 173.38, 173.381, 173.391, 173.392; Sections 305(a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended by the Older Americans Act Reauthorization Act of 2016; 45 C.F.R. 1321.11 (October, 2016 edition).**
5. Statute(s) the rule, as filed, amplifies or implements: **173.38, 173.381; 42 C.F.R. 460.68(a), 460.71(b)(1), 460.71(b)(2) (November 15, 2016).**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

ODA and the State Long-Term Care Ombudsman (SLTCO) propose to amend this rule as part of project to transfer ombudsman-related language from OAC Chapter 173-9 to OAC173-14-14.

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 explains implements the immunity language from ORC §§ 173.38 and 173.381 into OAC Chapter 173-9.

This rule contains no ombudsman-specific language to transfer to OAC173-14-14.

ODA proposes the following non-substantive updates to the rule's language:

\* Adding "Background checks: paid direct-care positions" to the beginning of the rule's title, which will help the general public more easily find the rule when using internet search engines.

\* Replacing the first occurrence of "a provider agreement" with "an AAA-provider agreement" and subsequent occurrence with "agreement."

\* Using the term "individual" for ODA-administered programs requiring ODA certification and continuing to use "consumer" for ODA-administered programs not requiring ODA certification.

\* Replacing "because the applicant or employee met the standards in rule 173-9-07 of the Administrative Code that allow a..." with "because rule 173-9-07 of the Administrative Code allowed the...."

\* Replacing "in a manner that complied with..." with "in compliance with...."

\* Replacing "that allow responsible party to..." with "allowed the responsible party to...."

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:

*Not Applicable.*

12. Five Year Review (FYR) Date: **5/4/2017**

(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 its proposed amendments to this rule would make no impact upon the biennial budget the Ohio General Assembly established for ODA.

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

3M40-490-612 Federal Independence Services.

3220-490-618 Federal Aging Grants.

GRF-490-411 Senior Community Services.

GRF-490-414 Alzheimer's Respite.

3C40-656-623 Long-Term Care Program Support - Federal.

GRF-656-423 Long-Term Care Program Support - State.

GRF-651-425 Medicaid.

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:

ODA estimates there is no cost of compliance associated with adopting the proposed amendments to this rule. Please review the business impact analysis (BIA) for additional information.

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? **No**

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**

For more information on disciplinary actions, please see OAC173-9-10.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **No**