

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 173-9-09

**Rule Type:** Rescission

**Rule Title/Tagline:** Background checks for paid direct-care positions: immunity from negligent hiring, certification, or AAA-provider agreements.

**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?** 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
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 duplicate the immunity provisions in R.C. §§ 173.38 and 173.381.

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

This rule duplicates the immunity provisions in R.C. §§ 173.38 and 173.381. ODA proposes to rescind this rule because (1) the Ohio Revised Code does not require ODA to duplicate the immunity provisions, (2) the rule does not include any original content, (3) this is part of ODA's plan to reduce the use of unnecessary regulatory restrictions (e.g., "shall not") to comply with R.C. §§ 106.03 and 121.951, and (4) the rule is seldom viewed. Google Analytics has revealed that this rule is the least-viewed rule in this chapter and was viewed on codes.ohio.gov only 1.66 times per week over a 99-week period.

- 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 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?**

This rule merely duplicates statutes that establish immunity. The rule does not create an adverse impact and immunity is not an adverse impact. Rescinding this rule will create no cost of compliance to any directly-affected person or organization.

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? 0**

**B. How many existing regulatory restrictions do you propose removing from this rule? 5**

(A)(1) If the responsible party hired the applicant or retained the employee in good faith and reasonable reliance upon the applicant's or employee's criminal record, the responsible party SHALL NOT be found negligent solely because of its reliance on the criminal record, even if the criminal record is later determined to have been incomplete or inaccurate.

(A)(2) If the responsible party conditionally hired the applicant in good faith and in compliance with rule 173-9-05 of the Administrative Code, the responsible party SHALL NOT be found negligent solely because it hired the applicant before receiving the applicant's criminal record.

(A)(3) If the responsible party in good faith hired the applicant or retained the employee because rule 173-9-07 of the Administrative Code allowed the responsible party to hire an applicant or retain an employee with a disqualifying offense on his or her criminal record, the responsible party SHALL NOT be negligent solely because the applicant or employee has been convicted of, or pleaded guilty to, a disqualifying offense.

(B)(1) If the responsible party certified or entered into an AAA-provider agreement (agreement) with the self-employed provider, or did not revoke or terminate the person's certification or agreement, in good faith and reasonable reliance upon the person's criminal record, the responsible party SHALL NOT be found negligent solely because of its reliance on the criminal record, even if the criminal record is later determined to have been incomplete or inaccurate.

(B)(2) If the responsible party in good faith certified or entered into an agreement with the self-employed provider, or did not revoke or terminate the self-employed provider's certification or agreement, because the person met the standards in rule 173-9-07.1 of the Administrative Code that allow a responsible party to certify or enter into an agreement with a self-employed provider who has a disqualifying offense on his or her criminal record, the responsible party SHALL NOT be negligent solely because the self-employed provider has been convicted of, or pleaded guilty to, a disqualifying offense.

- 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