

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 173-9-10

**Rule Type:** New

**Rule Title/Tagline:** Background checks for paid direct-care positions: consequences for failure to comply with this chapter.

**Agency Name:** Department of Aging

**Division:**

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#### 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?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 173.01, 173.02, 173.38, 173.381, 173.391, 173.392; 42 U.S.C. 3025(a)(1)(C); 45 C.F.R. 1321.11
5. **What statute(s) does the rule implement or amplify?** 173.38, 173.381; 45 C.F.R. 460.68(a), 460.71(a)(1), 460.371(a)(2), 460.194
6. **What are the reasons for proposing the rule?**

ORC §§ 173.38 and 173.381 require ODA to adopt rules to implement those sections. ORC §§ 173.391 and 173.392 require ODA to adopt rules to implement standards for providers, which include background checks. These rules inform readers where the laws on disciplining providers for non-compliance with OAC Chapter 173-9 are to be found. Without the rule, this chapter would contain no language on disciplinary actions and no bridge to inform readers that laws on the matter exist elsewhere.

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

This rule provides a link between the requirements of Chapter 173-9 and other rules or agreements establishing the means by which a responsible party would face consequences for failure to comply with Chapter 173-9.

In comparison to the rule being proposed for rescission, this new rule would make the following improvements:

(1) Add "Background checks for paid direct-care positions" to the beginning of the rule's title. This appears in the title of every other rule in Chapter 173-9 and quickly informs readers this rule does not regulate background checks on ombudsman positions, volunteer positions, or owners who aren't working in paid direct-care positions.

(2) Reorganize the rule to make it easier to read. Currently, the rule has an unnumbered introductory paragraph followed by 3 numbered paragraphs. ODA proposes to move the language in the introductory paragraph into each of the 3 paragraphs and eliminate the introductory paragraph.

(3) Delete "agency" as it occurs before "provider" in (C), because ODA also has authority to address the failure of ODA-certified non-agency and participant-directed providers to comply with Chapter 173-9.

(4) Delete the reference to 173-39-05.1, because that rule does not contain disciplinary actions.

(5) Add a paragraph to explicitly address PACE.

(6) Replace the internal cross-reference saying "Chapter 173-9 of the Administrative Code" with "this chapter."

(7) Replacing the following words to achieve internal consistency within this chapter and with other ODA rules:

- o "Disciplinary actions" with "failure to" comply and "does not" comply.
- o "ODA (or ODA's designee)" with "ODA (or its designee)."
- o "One or more of the following [2 options]" with "one or both of the following [2 options]."
- o "Furnishing" with "providing."
- o "Services" with "goods or services."

o "Consumers" with "individuals," but only for OAC Chapter 173-39.

8. **Does the rule incorporate material by reference?** No
9. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.**

*Not Applicable*

10. **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**

11. **As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will have no impact on revenues or expenditures.

\$0.00

ODA estimates the adoption of this proposed new rule will not affect the biennial budget the Ohio General Assembly established for ODA, especially because it is substantially-similar to a rule that ODA is simultaneously proposing to rescind.

12. **What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

There is no cost of compliance to any responsible party who remains in compliance with OAC Chapter 173-9. A responsible party may face disciplinary actions for non-compliance with this chapter. This rule does not detail the penalties. Instead, it itemizes the laws that may require disciplinary actions.

13. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B).** No
14. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C).** No

### **III. Common Sense Initiative (CSI) Questions**

**15. Was this rule filed with the Common Sense Initiative Office? Yes**

**16. 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**

**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**

A responsible party may face disciplinary actions for non-compliance with this chapter. This rule does not detail the penalties. Instead, it itemizes the laws that may require disciplinary actions.

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