

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

Agency Name

Division

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**173-9-10**

Rule Number

**NEW**

TYPE of rule filing

Rule Title/Tag Line

**Disciplinary action.****RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **No**

2. Are you proposing this rule as a result of recent legislation? **Yes**

Bill Number: **HB59**General Assembly: **130**Sponsor: **Amstutz**

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, 173.27, 173.38, 173.391, 173.392; Sections 305(a)(1)(C) and 712(a)(5)(D) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. 1321.11 (10-01-2013 edition).**

5. Statute(s) the rule, as filed, amplifies or implements: **173.27, 173.38; 42 C.F.R. 460.68(a), 460.71(a)(1), 460.71(a)(2), 460.194 (10-01-2013 edition).**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

The filing of this rule is part of a larger rule project that has 4 goals:

1. Increasing readers' comprehension by rewriting the rules with language that would be less likely to require interpretation, especially in areas that would address FAQs.

2. Implementing H.B.59's (130th G.A.) policy amendments to sections 173.27 and 173.38 of the Revised Code, which explicitly require sub-contractors, AAAs, and PAAs to conduct criminal records checks, but exempt direct-care positions in assisted-living facilities and positions transporting consumers while solely working for a mass transit provider.

3. Miscellaneous amendments.

4. Maintaining unity with the collaboratively-formed rules from January 1.

Please see the business impact analysis (BIA) for detailed information.

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 that ODA may take disciplinary actions against a responsible party that does not comply with the chapter.

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:

The proposed new rule cites 42 C.F.R. 460.48 (10-01-2013 edition), which the U.S. Government Printing Office makes available free of charge to the general public on <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

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:

42 C.F.R. 460.48 (10-01-2013 edition) regulates the disciplinary actions ODA may take against non-compliant providers of services to participants in PACE. In ODA's

rule, ODA intends to refer readers to the federal rule, not repeat the federal rule.

Additionally, the U.S. Government Printing Office makes the federal rule available free of charge to the general public on <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

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:

On March 10, 2014, ODA refilled the rule to:

1. Replace "ODA may take appropriate action against a responsible party that does not comply with Chapter 173-9 of the Administrative Code" with a list of various rules and agreements (i.e., contracts) that create the basis for disciplinary actions. ODA made this revision to the proposed new language to make it clear that it does not want this rule to create a new avenue for discipline that is different from the disciplinary actions that already exist in the aforementioned rules and agreements.
2. Schedule a second public hearing.
3. Revise this RSFA.

12. 119.032 Rule Review Date:

(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 that the rule project of which this rule proposal is a part will have no impact upon the biennial budget that the Ohio General Assembly established for ODA in H.B.59 (130th G.A.).

ODA does not have authority to spend in excess of what the General Assembly appropriated to ODA and the General Assembly had the changes to criminal records checks in mind when they passed H.B.59.

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

3220-490-618 Federal Aging Grants.

GRF-490-410 Long-Term Care Ombudsman.

GRF-490-411 Senior Community Services.

GRF-490-414 Alzheimer's Respite.

3220-490-618 Federal Aging Grants.

3C40-656-423 Long-Term Care Budget (State).

3M40-490-612 Federal Independence Services.

4C40-490-609 Regional Long-Term Care Ombudsman Program.

5BA0-490-620 Ombudsman Support.

GRF-651-425 Medicaid. (Covers administrative functions for PASSPORT Administrative Agencies)

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:

FEES

The proposed amendments to Chapter 173-9 of the Administrative Code (through proposed amended and new rules) should not require Ohio businesses to conduct a greater number of criminal records checks than before the effective date of H.B.59

(130th G.A.). Additionally, the fees remain the same as those established before the January 1, 2013 rules took effect.

The direct adverse impacts are the \$22 fees that each responsible entity (i.e., employer) pays to the Bureau of Criminal Investigation plus the impression costs that go to the fingerprint takers (e.g., license agency, county sheriff's office, city police).

The only responsible parties that may feel that the proposed amended and new rules create a new adverse impact are those who believed they were not responsible to comply with the current rules.

Please see the BIA for more information.

#### ADMINISTRATIVE COSTS

ODA's proposed changes to the chapter do not reduce most of the adverse impact of administrative costs associated with reviewing databases and checking criminal records. The best that ODA is offering the public is to rewrite the rules in a way that does not require interpretation, which, in theory, should reduce the amount of time necessary to comprehend the rules.

Please see the BIA for more information.

#### JOBLESSNESS

H.B.487 (129th G.A.) greatly increased the number of disqualifying offenses from 55 to 129. This created a new impact because beginning on January 1, 2013, employees with disqualifying criminal records could lose their jobs unless the provider wanted to retain them under the terms of rule 173-9-07 of the Administrative Code. Rule 173-9-07 of the Administrative Code minimizes the joblessness potential.

H.B.59's amendments to the Revised Code did not further increase the number of disqualifying offenses and should not increase the likelihood of joblessness, except for a hypothetical sub-contractor who may have "flown below the radar" before H.B.59's enactment. Such a sub-contractor could retain their ability to provide services under the terms of rule 173-9-07 of the Administrative Code, which should minimize the joblessness potential of this hypothetical situation.

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? **Yes**

As a whole, Chapter 173-9 of the Administrative Code requires applicants for ombudsman positions and direct-care positions as well as employees of ombudsman positions and direct-care positions to undergo criminal records checks. The potential disqualifying information on the criminal record could determine if a responsible party is permitted to hire the person or retain them as an employee in ombudsman positions or direct-care positions.

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? **Yes**

Rule 173-9-10 of the Administrative Code states that ODA has authority to issue a disciplinary action for failure to comply with the chapter.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **Yes**

The Attorney General's BCII charges a \$22 fee for each check, plus the entity that processes the fingerprints can charge an impression fee. (See the BIA for more details.)

Rule 173-9-08 of the Administrative Code requires the responsible party to retain records.