

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5101:2-5-09

Rule Type: Amendment

Rule Title/Tagline: Personnel and prohibited convictions for employment.

Agency Name: Department of Job and Family Services

Division: Division of Social Services

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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?** 11/28/2023
2. **Is this rule the result of recent legislation?** Yes
 - A. **If so, what is the bill number, General Assembly and Sponsor?** HB 33 - 135 - Edwards
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 5103.03
5. **What statute(s) does the rule implement or amplify?** 5103.03
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 is being proposed for amendment as a result of HB 33 of the 135th General Assembly. HB 33 added new prohibitive crimes for foster caregivers and employees of private agencies and the five year review..

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

This rule provides guidance to agencies on the process for completing background checks for agency employees. The rule was amended to remove all background check requirement language and consolidate this information into rule 5101:2-5-09.1 to make it easier for agencies to locate the information. Specifically, paragraphs G through U were removed. This language was moved to rule 5101:2-5-09.1. Appendix A was removed and moved to rule 5101:2-5-09.1. No other significant changes were made.

- 9. Does the rule incorporate material by reference? Yes**
- 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.**

This rule incorporates one or more references to another rule or rules of the Ohio Administrative Code. This question is not applicable to any incorporation by reference to another OAC rule because such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.75(A)(1)(d).

This rule incorporates one or more references to a form or a digital application into which data is entered. This question is not applicable to any incorporation by reference to forms or digital data applications because such reference is exempt from compliance with RC 121.75 to 121.74 pursuant to RC 121.75(B)(4).

- 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

This will have no impact on revenues or expenditures.

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

No new costs.

- 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.**

No expected fiscal effects on current or future budgets.

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? Yes**

Certification and re-certification of an agency by the Ohio Department of Job and Family Services is contingent, in part, upon compliance with this rule.

- 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**

Lack of compliance can result in revocation of an agency's certification or denial of re-certification.

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

Agencies must follow the procedures and guidelines for conducting and approving background checks. In this instance, the background requirements have been removed, but the rule still requires the structure of the governing of the agency.

- 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? 20

5101:2-5-09 (A) An agency, as defined in rule 5101:2-1-01 of the Administrative Code, shall have written descriptions specific for each position or group of positions within the agency's certified function for all college interns, volunteers, and employees.

5101:2-5-09 (B) Prior to hire, an agency shall obtain, from persons not related to the subject of reference, at least three written references or written notes on verbal references regarding prospective college interns, volunteers, and employees who will have direct contact with children.

5101:2-5-09 (C) An agency shall hire qualified employees to provide the services which it is certified to provide.

5101:2-5-09 (1) The person employed as the administrator of the agency shall possess at least a bachelor's degree from a college or university accredited by a nationally recognized accrediting organization and other qualifications and experience as determined by the governing body in writing.

5101:2-5-09 (2) An agency shall assure that all staff hired or who are under any personal service contract who are required by law to possess any professional license or certification are so licensed or certified.

5101:2-5-09 (3) Persons employed in positions responsible for the daily direct care or supervision of children shall be at least twenty-one years of age and possess a high school diploma or equivalency certificate.

5101:2-5-09 As an alternative to the educational requirement such persons shall have at least one year of full-time equivalent paid or volunteer experience in the direct provision of care to children.

5101:2-5-09 (D) In those instances when an employee is responsible for varied job responsibilities and, as such, falls within more than one category of paragraph (C) of this rule, such employee shall meet those qualifications which are the most rigorous among the competing criteria.

5101:2-5-09 (E) A residential facility shall require a JFS 01390 "ODJFS Medical Statement for Child Care Staff in Residential Facilities" to be completed by a licensed physician, physician assistant, clinical nurse specialist, certified nurse practitioner, or certified nurse-midwife within six months prior to employing any person who will have direct contact with children.

5101:2-5-09 (F) An agency shall, at its own discretion or at the request of the Ohio department of job and family services (ODJFS), require an employee or prospective employee to provide reports on the individual's physical or mental health from qualified professionals when the individual exhibits signs of a physical or mental health problem which might impair the individual's ability to ensure the health and safety of children.

5101:2-5-09 (I) An agency shall document that any person hired after October 29, 1993 as administrator, child care staff, caseworker, or in any other position responsible for a child's care in out-of-home care shall not have been convicted of or pleaded guilty to any of the offenses listed in appendix A to this rule except as provided in paragraph (J) of this rule.

5101:2-5-09 A prospective employee who has had a misdemeanor record of conviction sealed by a court pursuant to section 2953.32 of the Revised Code shall be considered to have met this condition.

5101:2-5-09 (4) Hiring the prospective employee will not jeopardize in any way the health, safety or welfare of the children the agency serves. The following factors shall be considered in determining whether to hire the prospective employee:

5101:2-5-09 (K) Except as provided in paragraph (J) of this rule, an agency shall not, as of October 29, 1993, hire a prospective employee as administrator, child care staff, caseworker, or in any other position responsible for a child's care in out-of-home-care if the person has been convicted of or pleaded guilty to any of the following:

5101:2-5-09 If the prospective employee fails to provide such proof or if the agency determines that the proof offered by the prospective employee is inconclusive or insufficient, the person shall not be hired. Any doubt shall be resolved in favor of protecting the children the agency serves.

5101:2-5-09 (M) To determine whether a prospective employee is qualified to be hired pursuant to paragraph (K) of this rule, a criminal records check shall be conducted pursuant to rule 5101:2-5-09.1 of the Administrative Code.

5101:2-5-09 (O) A conviction of, or plea of guilty to, an offense listed in appendix A to this rule shall not prevent a prospective employee's hire if the person has been granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code or the conviction or guilty plea has been set aside pursuant to law.

5101:2-5-09 (U) An agency shall have a separate personnel file for each employee which shall include at a minimum:

5101:2-5-09 (V) Personnel files for each employee shall be maintained for at least five years after the date of employment ends.

5101:2-5-09 (W) Nothing in this rule shall apply to a foster caregiver who is subject to the provisions of Chapter 5101:2-7 of the Administrative Code.

- 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