

Rule Summary and Fiscal Analysis (Part A)**Department of Job and Family Services**

Agency Name

Division of Medical Assistance

Division

Nancy Van Kirk

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Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

**ODJFS-administered waiver program: Criminal records
checks involving agency providers.****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: **HB119**General Assembly: **127**Sponsor: **Dolan**

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: **5111.033, 5111.85**

5. Statute(s) the rule, as filed, amplifies or implements: **109.572, 5111.01, 5111.02, 5111.033, 5111.85**

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

This rule is being proposed for adoption to replace rule 5101:3-12-25 of the Administrative Code for the purpose of renumbering rule 5101:3-12-25, and to implement provisions of RC 5111.033, adopted under Am. Sub. H.B. 119, 127th General Assembly, relating to administration of home and community-based service waivers.

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 sets forth the process and requirements for the criminal records checks of persons under final consideration for employment with a waiver agency, and existing employees with a waiver agency in a full-time, part-time or temporary position, and who are providing home and community-based services (HCBS) in an ODJFS-administered waiver. Changes between this new rule and the rule it is replacing are that the applicant must now request the background check from the Bureau of Criminal Identification and Investigation (BCII), rather than the waiver agency; the report must be sent to the waiver agency directly from BCII, rather than the applicant; the waiver agency must take into consideration whether the applicant has been found eligible for intervention in lieu of conviction for any of the disqualifying offenses as outlined in RC 5111.033; the waiver agency cannot employ an applicant who has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for more than one disqualifying offense even if the applicant meets the personal character standards listed in the rule; the personal character standards have been expanded to include the following: the disqualifying offense was not perpetrated against an individual under age eighteen or age sixty or older, or against an individual of any age with disabilities, the disqualifying offense was disorderly conduct and the conviction was not based upon an original complaint or indictment involving one of the violent offenses listed in the rule, five years have passed since the applicant was fully discharged from imprisonment, probation and/or parole for the disqualifying offense, and the disqualifying offense was not related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct involving a federal or state-funded program, and the applicant agrees, in writing, to have the waiver agency notify the potential consumer of the disqualifying offense prior to commencing service delivery; and the rule adds soliciting, Workers' Compensation fraud, identity fraud, disorderly conduct, endangering children, falsification (in a theft offense or to purchase a firearm), attempting to commit an offense, engaging in a pattern of corrupt activity, and drug paraphernalia to the list of disqualifying offenses as outlined in RC 5111.033 (formerly RC 5111.95).

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 rule incorporates one or more references to the Ohio Revised Code. This question is not applicable to any incorporation by reference to the ORC because

such reference is exempt from compliance with ORC 121.71 to 121.74 pursuant to ORC 121.76(A)(1).

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:

Not applicable.

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:

Not Applicable.

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

This proposed rule will not change the agency's projected budget during the current

biennium.

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

Not applicable.

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:

There are no new costs to providers. Agency providers will continue to be required to pay to the Bureau of Criminal Identification and Investigation the cost of conducting a criminal records check.

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**