

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

Agency Name

**Division of Medical Assistance**

Division

**Ben Anderson**

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**5101:3-45-07**

Rule Number

**NEW**

TYPE of rule filing

Rule Title/Tag Line

**Ohio home care waiver, transitions DD waiver and transitions carve-out waiver programs: 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: **HB487**General Assembly: **129**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: **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This rule is replacing, in part, rescinded rule 5101:3-45-07 in order to update the criminal record check process and requirements for employees of, and persons

under final consideration for employment with, agencies that provide home and community-based services to individuals enrolled on the Ohio Home Care, Transitions DD and Transitions Carve-Out Waivers administered by the Ohio Department of Job and Family Services. These changes are the result of changes in sections 5111.033 and 109.572 of the Revised Code, as enacted by Am. Sub. H.B. 487 of the 129th General Assembly.

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 criminal records check requirements for agency providers of Home and Community-Based Services (HCBS) under the Ohio Home Care, Transitions DD and Transitions Carve-Out Waiver Programs. The rule:

1) Establishes key definitions including, but not limited to: "applicant," "chief administrator," "community-based long term care agency," "disqualifying offense," "employee," "home and community-based services Medicaid waiver component" and "waiver agency."

2) Establishes a required review of various free databases for disqualifying information regarding an applicant or employee prior to conducting a criminal records check of an applicant or employee.

3) Exempts from database reviews and criminal records checks those individuals who are subject to criminal records check requirements in accordance with section 3701.881 or section 173.394 of the Revised Code.

4) Phases in required criminal records rechecks every five years. Employees hired prior to January 1, 2008 will be rechecked within thirty days of the anniversary of their date of hire, and employees hired on or after January 1, 2008 will be rechecked within thirty days of the five-year anniversary of their date of hire.

5) Requires a fee to be paid by the waiver agency, which may be passed on to the applicant or employee.

6) Allows for an individual's conditional employment for a period of 60 days while the waiver agency awaits the results of the criminal records check. The rule requires the waiver agency to terminate an individual if the results are not received within 60 days of the request or if the results disclose a disqualifying offense and the waiver agency does not choose to employ the individual after the exclusionary periods set forth in OAC rule 5101:3-45-11 have elapsed.

7) Establishes recordkeeping requirements pertaining to the criminal records check.

8) Sets forth to whom the records check may be disclosed.

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 Ohio Revised Code because such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.76(A)(1).

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 121.76(A)(3).

This rule incorporates one or more dated references to the Social Security Act. This question is not applicable to those references in this rule because such references are exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.76(B)(2).

This rule incorporates one or more references to the Federal Acquisition Regulation. This question is not applicable to those references in this rule because such references are exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.76(B)(2).

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. If applicable, indicate each specific paragraph of the rule that has been modified:

Office of Medical Assistance (OMA) is revising this rule as follows:

1) OMA is amending this rule to add RC 2925.141 (illegal use or possession of marihuana drug paraphernalia) to the list of disqualifying offenses. After the passage of H.B. 487, S.B. 337 created this new offense and added it to the list of disqualifying offenses.

2) Amending paragraph (C)(1)(a) to change the federal Excluded Parties List System database to the federal System for Award Management (SAM) database.

3) Amending paragraph (C)(3) to add reference to new paragraph (G).

4) Adding paragraph (G) to add a limited grandfathering provision that permits a waiver agency to choose to continue to employ an employee who is otherwise excluded if the employee was convicted of, or pleaded guilty to, a Tier IV offense if:

The employee was hired prior to January 1, 2013;

The conviction or guilty plea occurred prior to January 1, 2013; and

The waiver agency has considered the nature and seriousness of the offense(s), and attests in writing prior to April 1, 2013, to the character and fitness of the employee based on his/her demonstrated work performance. The required written attestation must be maintained in the employee's personnel record.

#### 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

The proposed rule changes will have no impact on the 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:

The administrative cost for conducting a database review is \$24 per hour based on industry estimates. ODJFS estimates that for waiver agencies, the database review would take approximately 20 minutes per applicant/employee, at a cost of \$8 administrative time per database review.

The cost to an average waiver agency, using an average cost of \$100.00 across employee types (registered nurses, licensed practical nurses, home health aides, and therapists):

\$1,806 for employees hired before January 1, 2008; and

\$361 each year going forward for employees hired in subsequent years.

Based upon these assumptions, ODJFS estimates a cost of \$361,193 to waiver agencies for the first year and \$72,238 in subsequent years. Additionally, each agency will be required to either pay or pass on the cost for criminal records checks of new applicants that pass the database check, which averages \$100 across employee types.

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? **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? **Yes**

Per RC 5111.033 and OAC rule 5101:3-45-07, the applicant or employee of the waiver agency cannot provide home and community-based services to an individual enrolled on the Ohio Home Care, Transitions DD or Transitions Carve-Out Waiver if they do not pass their criminal records check.

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

RC 5111.033 and OAC rule 5101:3-45-07 require a fee to be paid to the Bureau of Criminal Investigation and Identification by the waiver agency, which may be passed on to the applicant or employee. Additionally, the statute and the rule require that criminal records check logs be maintained by the waiver agency for both applicants and employees.