

**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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**5101:3-45-08**

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 independent 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: **5111.034, 5111.85**

5. Statute(s) the rule, as filed, amplifies or implements: **109.572, 5111.01, 5111.02, 5111.034, 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This rule is replacing, in part, rescinded rule 5101:3-45-08 in order to update the criminal record check process and requirements for independent providers of home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 5111.034 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 independent 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: "anniversary date," "applicant," "disqualifying offense," "effective date of provider agreement," "home and community-based services Medicaid waiver component" and "independent provider;"
- 2) Requires criminal records rechecks annually for all independent providers;
- 3) Requires a fee to be paid by the independent provider;
- 4) Establishes recordkeeping requirements pertaining to the criminal records check;
- 6) 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).

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 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.

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:

Independent providers will be responsible for the costs associated with their own background checks. This is consistent with current statute and practice. The current fee for a Bureau of Criminal Investigation and Identification criminal records check for all applicants considered for employment is \$22.00, which may vary from county to county.

The current fee for a criminal records check from the Federal Bureau of Investigation for each applicant considered for employment, who has not resided in Ohio for five years is \$24.00 which may vary from county to county. BCII accepts and processes FBI background checks.

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 5111.034 and OAC rule 5101:3-45-08, an applicant or independent provider cannot provide home and community-based services to individuals

enrolled on the Ohio Home Care, Transitions DD or Transitions Carve-Out Waivers 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 5111.034 and OAC rule 5101:3-45-08 requires a fee to be paid to the Bureau of Criminal Investigation and Identification by the applicant or independent provider. The Ohio Department of Job and Family Services receives and maintains the results of the criminal records checks.