

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

Agency Name

Division of Medical Assistance

Division

Ben Anderson

Contact

30 East Broad St 31st Floor ODJFS Office of Legal Services Columbus OH 43215-3414

Agency Mailing Address (Plus Zip)

614-466-4605

Phone

614-752-8298

Fax

Benjamin.Anderson@jfs.ohio.gov

Email

5101:3-45-11

Rule Number

NEW

TYPE of rule filing

Rule Title/Tag Line

Ohio home care waiver, transitions DD waiver and transitions carve-out waiver programs: Exclusionary Periods for Disqualifying Offenses; Certificates; and Pardons.**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, 5111.034, 5111.85**

5. Statute(s) the rule, as filed, amplifies or implements: **109.572, 5111.01, 5111.02, 5111.033, 5111.034, 5111.85**

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

This rule is replacing parts of rescinded rules 5101:3-45-07 and 5101:3-45-08, and

updates 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 (HCBS) to individuals enrolled on the Ohio Home Care, Transitions DD and Transitions Carve-Out Waivers administered by the Office of Medical Assistance. This rule includes new statute language to change the department name from "Ohio Department of Jobs and Family Services" to "Office of Medical Assistance." 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:

The personal character standards set forth in both OAC rules 5101:3-45-07 and 5101:3-45-08 are being replaced by OAC rule 5101:3-45-11. This rule sets forth a tiered system of exclusionary periods for disqualifying offenses. The periods range from five years to permanent exclusion depending upon the type and number of offenses. The rule also sets forth policy regarding pardons under which certain individuals can obtain a Certificate of Qualification for Employment issued by a court of common pleas with competent jurisdiction pursuant to Section 2953.25 of the Revised Code; or a Certificate of Achievement and Employability in an HCBS-related field, issued by the Ohio Department of Rehabilitation and Corrections pursuant to Section 2961.22 of the Revised Code.

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:

The Office of Medical Assistance is revising paragraph (G) to add RC 2925.141 (illegal use or possession of marijuana drug paraphernalia) to Tier V. 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:

No new costs.

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**

Per OAC rule 5101:3-45-11, in certain circumstances, individuals may be permitted to provide home and community-based services to individuals enrolled on the Ohio Home Care, Transitions DD or Transitions Carve-Out Waivers if they obtain a certificate of achievement and employability, a certificate of qualification for employment or a pardon.

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**

Applicants, employees of waiver agencies and independent providers of home and community-based services cannot provide services to individuals enrolled on the Ohio Home Care, Transitions DD or Transitions Carve-Out Waivers if, as a result of their criminal records check, it is determined they fall within one of the exclusionary tiers set forth in OAC rule 5101:3-45-11.

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

Applicants, employees of a waiver agency, or independent providers must provide evidence of their receipt of a certificate of achievement and employability, a certificate of qualification for employment or a pardon before they can be considered providers of home and community-based services to individuals enrolled on the Ohio Home Care, Transitions DD or Transitions Carve-Out Waivers.