

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 5160-45-07

**Rule Type:** Amendment

**Rule Title/Tagline:** Ohio home care waiver, transitions DD waiver and transitions carve-out waiver programs: criminal records checks involving agency providers.

**Agency Name:** Ohio Department of Medicaid

**Division:**

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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?** 12/8/2017
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 5164.342, 5166.02
5. **What statute(s) does the rule implement or amplify?** 109.572, 5162.03, 5164.02, 5164.342, 5166.02
6. **What are the reasons for proposing the rule?**

This rule is being amended as a result of five year review.
7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

This rule sets forth the process and requirements for the criminal records checks of employees of, and persons under final consideration for employment with, agencies

that provide home and community-based services to individuals enrolled in Ohio Department of Medicaid (ODM) -administered waiver programs. Proposed changes include the addition of the definition of "retained applicant fingerprint database" or "RAPBACK," and language affirming that if a waiver agency enrolls an employee in RAPBACK, the criminal records check requirements of the rule are considered to have been met for that employee. The proposed changes also include the addition of the Medicare exclusion database if the waiver agency is using ODM's automated registry check system (ARCS), and the Ohio Medicaid Provider Exclusion and Suspension list, to the list of exclusionary databases. Proposed changes also include updates to Revised Code and Administrative Code rule cites and commonly used terminology.

- 8. Does the rule incorporate material by reference? Yes**
- 9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.**

This rule incorporates one or more references to the Code of Federal Regulations (CFR). 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 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 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).

- 10. 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**

- 11. As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will have no impact on revenues or expenditures.

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The proposed rule changes will have no impact on the projected budget during the current biennium.

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

Stakeholder organizations have quantified their estimated cost of compliance to be approximately \$100 per applicant/employee to an agency. Calculation of this estimate included administrative costs, employee wages and expenses, and criminal record check and FBI check fees. Please note: agency provider criminal record checks must be updated every five years. Additionally, criminal record check and FBI check fees may be transferred to the waiver employee.

- 13. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**
- 14. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**

### **III. Common Sense Initiative (CSI) Questions**

- 15. Was this rule filed with the Common Sense Initiative Office? Yes**
- 16. 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? 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 5164.342 and OAC rule 5160-45-07, the applicant or employee of the waiver agency cannot provide home and community-based services to an

individual enrolled on an ODM-administered waiver program 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 5164.342 and OAC rule 5160-45-07 require a fee to be paid to the Bureau of Criminal Investigation by the waiver agency, which may be passed on to the applicant or employee. Additionally, the statute and the rule require that criminal record logs be maintained by the waiver agency for both applicants and employees.