

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5160-45-08

Rule Type: Amendment

Rule Title/Tagline: Ohio home care waiver, transitions DD waiver and transitions carve-out waiver programs: criminal records checks involving independent 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?** Yes
 - A. **If so, what is the bill number, General Assembly and Sponsor?** HB 49 - 132 - Smith
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 5164.341, 5166.02
5. **What statute(s) does the rule implement or amplify?** 109.572, 109.5721, 5162.03, 5164.02, 5164.341, 5166.02
6. **What are the reasons for proposing the rule?**

This rule is being amended as a result of five year review and to include changes resulting from enactment of HB 49 (132nd General Assembly).

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 check requirements for independent providers of Ohio Department of Medicaid (ODM) - administered waiver program services. The rule is being amended to permit ODM to use the information contained in the Retained Applicant Fingerprint Database (RAPBACK) to meet the annual criminal record check requirements for independent providers. 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 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 increase expenditures.

\$30,000.00

ODM pays the \$5.00 fee to the Ohio Bureau of Criminal Investigation for each independent provider subject to RAPBACK. This is estimated to cost ODM approximately \$30,000 per year for more than 6,000 independent providers. As a result, there will be a reduction in issuance of provider mailings and certified letters (an expenditure of more than \$12,000 per year), permitting ODM staff to perform other duties. Thus any impact on revenues/expenditures would be negligible.

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

Independent provider applicants will be responsible for the costs associated with their initial background checks. This is consistent with current statute and practice. The current fee for a BCI 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. BCI accepts and processes FBI background checks.

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 5164.341 and OAC 5160-45-08, an applicant or independent provider cannot furnish home and community-based services to individuals 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 5164.341 and OAC 5160-45-08 require a fee to be paid to the Bureau of Criminal Investigation by an applicant for their initial background check, and by ODM for independent providers as part of RAPBACK implementation. ODM receives and maintains the results of the criminal records checks/RAPBACK report.