

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 173-9-04

Rule Type: Rescission

Rule Title/Tagline: Background checks for paid direct-care positions: when to check criminal records, inform applicants, charge fees, and use forms (except for the self-employed).

Agency Name: Department of Aging

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?** 7/20/2023
2. **Is this rule the result of recent legislation?** Yes
 - A. **If so, what is the bill number, General Assembly and Sponsor?** SB 9 - 134 - McColley, Roegner
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 121.07, 173.01, 173.02, 173.38, 173.391, 173.392; 42 U.S.C. 3025; 45 C.F.R. 1321.11
5. **What statute(s) does the rule implement or amplify?** 109.572, 173.38; 42 C.F.R. 460.68, 460.71
6. **Does the rule implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or regulation requires?** No
 - A. **If so, what is the citation to the federal law or rule?** Not Applicable

7. What are the reasons for proposing the rule?

This rule exists to implement the following from R.C. §173.381: (1) the requirement for a responsible party to conduct a criminal records check on each applicant for a paid direct-care position, (2) the state's option to require a responsible party to conduct a criminal records check on an employee in a paid direct-care position, (3) exemptions to classes of employees from the requirement to undergo a criminal records check, (4) the deadlines for conducting a criminal records check, and (5) standards for special situations.

8. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.

This rule implements the following from R.C. §173.381: (1) the requirement for a responsible party to conduct a criminal records check on each applicant for a paid direct-care position, (2) the state's option to require a responsible party to conduct a criminal records check on an employee in a paid direct-care position, (3) exemptions to classes of employees from the requirement to undergo a criminal records check, (4) the deadlines for conducting a criminal records check, and (5) standards for special situations. ODA proposes to rescind this rule and replace it with a proposed new rule. For details, please review the business impact analysis (BIA) and the RSFA of the proposed new rule.

9. Does the rule incorporate material by reference? No**10. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

Not Applicable

11. 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**12. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

\$0.00

Rescinding this rule will have no impact upon the biennial budget that the Ohio General Assembly established for ODA in House Bill 33 (135th G.A.), especially because ODA is simultaneously proposing to adopt a similar new rule of the same number.

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

Please review ODA's responses to questions #15, #16, and #17 on the BIA.

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

- 15. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**

- 16. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

This rule mentions fees imposed by R.C. §§ 109.575 and 173.38. ODA does not charge these fees. Instead, BCII and BCII's WebCheck vendors charge these fees.

III. Common Sense Initiative (CSI) Questions

- 17. Was this rule filed with the Common Sense Initiative Office? Yes**

- 18. 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**

Please review ODA's responses to questions #15, #16, and #17 on the BIA.

- 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? No**

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

This rule repeats the requirements in R.C. §173.38 to conduct criminal records checks and to pay fees for those checks. For more information, please review ODA's responses to questions #15, #16, and #17 on the BIA.

- D. **Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies?** No

IV. Regulatory Restriction Requirements under S.B. 9. Note: This section only applies to agencies described in R.C. 121.95(A).

19. **Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes**

- A. **How many new regulatory restrictions do you propose adding to this rule?** 0
- B. **How many existing regulatory restrictions do you propose removing from this rule?** 23

(A) Database reviews first: The responsible party SHALL conduct database reviews on each applicant (pre-hire) and each employee (post-hire) before conducting a criminal records check.

(A) If the database reviews disqualify the applicant or employee, the responsible party SHALL NOT conduct a criminal records check.

(A) If the database reviews did not disqualify the applicant or employee, the responsible party SHALL conduct a criminal records check.

(A)(1) Applicants (pre-hire): The responsible party SHALL conduct a criminal records check on each applicant.

(A)(1) The responsible party SHALL do so even if..

(A)(1) ...paragraph (B) of rule 173-9-02 of the Administrative Code would not REQUIRE the responsible party to check the person again after the responsible party hired the applicant.

(A)(2) Direct-care position: According to one of the following three schedules, the responsible party SHALL conduct a criminal records check on each employee at least once every five years:

(A)(2)(a) Five-year schedule for pre-2008 hire dates: If the responsible party hired the employee before January 1, 2008, the responsible party SHALL conduct a criminal records check on the employee no later than thirty days after the 2013 anniversary of the employee's date of hire and no later than thirty days after each five-year anniversary after 2013.

(A)(2)(b) Five-year schedule for 2008-present hire dates: If the responsible party hired the employee on or after January 1, 2008, the responsible party SHALL conduct a criminal records check on the employee no later than thirty days after the fifth anniversary of the employee's date of hire and no later than thirty days after each five-year anniversary.

(D)(1) Residency: If an applicant or employee does not provide the responsible party with evidence that he or she has been a resident of Ohio for the five-year period immediately preceding the date the responsible party MUST request a criminal records check,...

(D)(1) ...or if the applicant or employee does not provide the responsible party with evidence that BCII has requested his or her criminal records from the FBI within the five-year period immediately preceding the date the responsible party requests the criminal records check, the responsible party SHALL request that BCII obtain criminal records from the FBI as part of the criminal records check.

(E) inform applicant: When an applicant initially applies for a paid direct-care position (or when an employment service initially refers an applicant to a responsible party), the responsible party SHALL inform the applicant of the following:

(E)(1) If the responsible party gives the applicant final consideration for hiring into the position, the following SHALL happen:

(E)(1)(a) The responsible party SHALL review the applicant's status in the databases listed in rule 173-9-03 of the Administrative Code.

(E)(1)(b) Unless the database reviews reveal that the responsible party SHALL NOT hire the applicant,....

(E)(1)(b) ..., the responsible party SHALL conduct a criminal records check....

(E)(1)(b) ...and the applicant SHALL provide a set of his or her fingerprints as part of the criminal records check.

(E)(2) If the responsible party hires the applicant, as a condition to retain the position, the responsible party SHALL conduct post-hire database reviews and criminal records checks according to one of the three schedules listed under paragraph (B)(2) of this rule.

(E)(3) If the responsible party intends to charge the applicant the fees divisions (C)(2) and (C)(3) of section 109.572 of the Revised Code authorize, the responsible party SHALL inform the applicant of the fees at the time of application.

(F)(1) The responsible party SHALL pay BCII the fees that divisions (C)(2) and (C)(3) of section 109.572 of the Revised Code authorize for each criminal records check.

(G) ..., the responsible party SHALL complete the following two tasks:

(G)(1) The responsible party SHALL provide each applicant or employee with the form(s) that BCII requires in division (C)(1) of section 109.572 of the Revised Code.

(G)(2) The responsible party SHALL obtain the completed fingerprints and forms, then forward them to BCII for processing.

C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.

D. Please justify the adoption of the new regulatory restriction(s).

Not Applicable