CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Aging (ODA)

Regulation/Package Title: H.B.487: Criminal Records Checks

Rule Number(s): Chapter 173-9 of the Administrative Code, plus collateral amendments in rules 173-3-06, 173-14-14, 173-39-02, 173-39-05, 173-39-05.1, 173-39-07, 173-40-06, and 173-42-06 of the Administrative Code

Date: August 31, 2012, revised October 11, 2012 and October 16, 2012

Rule Type:

- X New
- X Amended
- X 5-Year Review
- X Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Business Impact Analysis

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.
Please include the key provisions of the regulation as well as any proposed amendments.

The proposed rules implement H.B.487's amendments to sections 173.27 and 173.394 of the Revised Code, which regard database reviews and criminal record checks.

Here are the rule-by-rule details:

- **New Chapter 173-9 of the Administrative Code:**
  - **Overall:**
    - H.B.487's changes to sections 173.27 and 173.394 of the Revised Code considerably lengthened the amount of material to cover in rules on criminal records checks. To make the rules easier to follow, ODA is proposing to:
      - Break what would have been a giant rule into smaller, one-topic rules.
      - Make the title of each rule the topic of the rule.
      - Arrange the rule topics in an order that is comparable to the Dept. of Health's proposed new rules. This would make proposed new rule 173-9-01 of the Administrative Code comparable to proposed new rule 3701-60-01 of the Administrative Code, proposed new rule 173-9-05 of the Administrative Code comparable to proposed new rule 3701-60-05 of the Administrative Code, and so on.
    - ODA is proposing to no longer duplicate the rule(s) for the ombudsman program. Instead, ODA now calls the entity responsible for conducting the check the "responsible entity" instead of the employer or the state long-term care ombudsman. The term "responsible entity" is a universal term that ODA uses throughout the proposed new rules. It applies to the ombudsman program and also various types of direct-care providers (*e.g.*, agencies, self-employed, consumer-directed). For comparison, section 5123.081 of the Revised Code uses the term "responsible entity" and a universal term that applies to the many responsible entities for the Dept. of Developmental Disabilities' criminal records check requirements.

- **New Rule 173-9-01 Introduction and definitions:**

  - The rule introduces Chapter 173-9 of the Administrative Code and defines terms used in the chapter.

  - The definition of "direct care" remains unchanged from the definition in the current version of rule 173-9-01 of the Administrative Code.

  - ODA is proposing to define the terms "applicant," "employee," and "responsible entity" in a manner that makes it clear that the terms apply to ombudsman services and direct care.

  - "Minor drug possession" is a new term that previously only appeared in the comparable rules for the Depts. of Developmental Disabilities and Health. A person with a conviction for drug possession would be handled differently by proposed new rule 173-9-07 of the Administrative Code if the crime was a *minor* drug possession offense. (*i.e.*, Tier IV *vs.*, Tier V)

  - "Disqualifying offense" is a term that ODA did not define in the current version of rule 173-9-01 of the Administrative Code. "Disqualifying offense" is an offense that would disqualify a person from providing ombudsman services or direct care. Before H.B.487, 55 disqualifying offenses were listed in sections 173.27 and 173.394 of the Revised Code. H.B.487 moved the list to section 109.572 of the Revised Code and increased the list of disqualifying offenses to 129. The new list of disqualifying offenses in section 109.572 of the Revised Code also applies to the comparable statutes and rules of the Depts. of Developmental Disabilities, Health, and Job and Family Services.

  - "Chief administrator" is defined in a way that is useful for an agency provider *and* a non-agency provider. As a one-person business, each non-agency provider under the Choices and PASSPORT Programs and each self-employed provider under a non-Medicaid program is the chief administrator.

  - "Waiver agency" is a new term that H.B.487 added to division (B) of section 173.394 of the Revised Code. See paragraph (B) of proposed new rule 173-9-02 of the Revised Code for the use of the term.

- **New Rule 173-9-02 Applicability:**

  - Applicability: In this proposed new rule, ODA lists the entities that are responsible to conduct the criminal records checks on applicants and employees for paid positions to provide ombudsman services or direct care.

  - Inapplicability:

    - ODA expounds upon two exceptions to the requirements found in division (B) of section 173.394 of the Revised Code in order to close any apparent loopholes to enforcing the requirements that all applicants and employees for paid positions to provide direct care undergo criminal records checks. This should provide clarity for the many providers who provide an array of direct-care services. Also, the effort to homogenize the regulations between ODA and the Depts. of Developmental Disabilities, Health, and Job and Family Services, the status of an applicant or employee under one of the state agency's rules *vs.*, another agency's rules should make no difference for a provider. Here is a breakdown:

      - If an employee works for an agency that provides Medicare-certified home health care, but the service the employee provides is not Medicare-certified home health care, but is direct care for an ODA-administered program, Chapter 173-9 of the Administrative Code applies to that employee. Thus, if an agency provides Medicare-certified home health care, home-delivered meals, and personal emergency response systems, the employees who provide home-delivered meals and personal emergency response systems are subject to Chapter 173-9 of the Administrative Code.

      - If an employee works for a waiver agency that provides Medicaid waiver services that the Dept. of Job and Family Services monitors, but the employee provides Medicaid waiver services or non-Medicaid services that the Dept. of Job and Family Services does not monitor, Chapter 173-9 of the Administrative Code applies to that employee. This matters for providers of services that ODA monitors that the Dept. of Job and Family Services does not, such as assisted living, consumer-directed care, and

congregate meals. It is also noteworthy that the Dept. of Job and Family Services' rule that would regulate a waiver agency (proposed new rule 5101:3-45-07 of the Administrative Code) says, "This rule does not apply to ... Applicants and employees of a waiver agency that is also a community-based long term care agency who are subject to database reviews and criminal records checks in accordance with section 173.394 of the Revised Code and the rules adopted thereunder."

- ODA also explains that (1) non-home and community-based elements of a PACE program, (2) a residential care facility that is not part of the Assisted Living Program, and (3) volunteers are not subject to the chapter.

- **New Rule 173-9-03 Free database reviews:** To minimize the costs of criminal records checks, ODA and the Depts. of Developmental Disabilities, Health, and Job and Family Services are proposing to take the authority granted under sections 173.27, 173.394, and other sections of the Revised Code to require the responsible entities to check six free databases before paying for a criminal records check. If the free databases reveal that an employee is disqualified from providing an ombudsman service or direct care, the responsible entity has no responsibility to conduct a criminal records check.

- **New Rule 173-9-04 General requirements:**

  - This proposed new rule contains the general requirements for conducting criminal records checks.

  - Many topics in this rule are similar to the requirements found in the current versions of rules 173-9-01 and 173-14-14 of the Administrative Code. These topics are the requirements to notify applicants, obtain fingerprints, check FBI records, and pay for the checks, as well as matters regarding using direct-care employees obtained through an employment service.

  - One new topic regards frequency. Using the authority that H.B.487 granted to ODA and the Depts. of Developmental Disabilities, Health, and Job and Family Services, all four agencies are proposing to adopt rules that phase-in a requirement for current employees to have their criminal records checked every five years based upon their anniversary dates of hire. Yet, current employees whose only direct care is (1) delivering home-delivered meals, (2) having access to

consumer's personal information, or (3) providing a one-time-ever service are exempted from the requirement to have ongoing criminal records checks.

- In the proposed new rule, ODA also repeats language found in the current and new version of section 109.572 of the Revised Code that say a revalidation of the criminal records is another form of an official copy of the criminal records report.

- **New Rule 173-9-05 Conditional hiring:**

  - This rule regulates conditional hiring. It contains the same criteria found in the current versions of rules 173-9-01 and 173-14-14 of the Administrative Code.

  - H.B.487 and the proposed new rules for ODA and the Depts. of Developmental Disabilities, Health, and Job and Family Services allow for the same 60 days of conditional hiring. Before the passage of H.B.487, section 3701.881 of the Revised Code only the Dept. of Health to offer 30 days of conditional hiring.

- **New Rule 173-9-06 Disqualifying offenses:**

  - This rule presents the lists of offenses that would disqualify an applicant or employee from providing ombudsman services or direct care.

  - H.B.487 gave ODA and the Depts. of Developmental Disabilities, Health, and Job and Family Services identical lists of offenses.

  - H.B.487 increased the list of disqualifying offenses for ODA's providers from 55 to 129.

  - In response to *State v. Niesen-Pennycuff* (2012), ODA's proposed new rule does not list treatment in lieu of conviction (§2925.041) as a disqualifying offense.

- **New Rule 173-9-07 Disqualifying offense exclusionary periods; certificates; pardons:**

  - In this proposed new rule, ODA sets forth the criteria for how a responsible entity may be able to hire certain applicants and retain certain employees for positions to provide ombudsman services or direct care even if the applicant's or employee's criminal record lists a disqualifying offense.

- ODA and the Depts. of Developmental Disabilities, Health, and Job and Family Services are proposing to adopt identical criteria to the material in this proposed new rule.

- As a replacement to the subjective "personal character standards" found in the current versions of rules 173-9-01 and 173-14-14 of the Administrative Code, this proposed new rule lists each disqualifying offense found in proposed new rule 173-9-06 of the Administrative Code into one of five tiers. The tiers determine how long a person with a conviction for each offense is barred from providing ombudsman services or direct care.

    - Tier I offenses require a permanent bar.

    - Tier II offenses require a 10-year bar. If the person has multiple disqualifying offenses, of which at least one falls under Tier II, the person is barred for 15 years.

    - Tier III offenses require a 7-year bar. If the person has multiple disqualifying offenses, of which at least one falls under Tier III, the person is barred for 10 years.

    - Tier IV offenses require a 5-year bar. If the person has multiple disqualifying offenses, of which at least one falls under Tier IV, the person is barred for 7 years. A drug possession offense fits into this tier unless it is a *minor* drug possession offense.

    - Tier V offenses do not bar a person from employment. A *minor* drug possession offense fits into this tier.

- The proposed new rule incorporates the new Certificates of Qualification for Employment created by S.B.337 (129th G.A.). A common pleas court with competent jurisdiction may grant such a certificate to an applicant or employee to declare that an employer may employ the applicant or employee even if this rule would, otherwise, forbid the employment because the person has a criminal conviction that falls into Tiers II through IV.

- The proposed new rule incorporates the new Certificates of Achievement and Employability created by H.B.86 (129th G.A.). The Dept. of Rehabilitations and Corrections may grant such a certificate to an applicant or employee to declare that an employer may employ the applicant or employee even if this rule would, otherwise, forbid the employment because the

person has a criminal conviction that falls into Tiers II through IV.

- Just as in the current versions of rules 173-9-01 and 173-14-14 of the Administrative Code, the proposed new rule makes exceptions to disqualifications for those with pardons.

- **New Rule 173-9-08 Records:** This proposed new rule regards records, including confidentiality requirements and records-retention requirements. For responsible entities that provide direct care, the rule also requires a roster.

- **New Rule 173-9-09 Immunity from negligent hiring:** This proposed new rule contains language on immunity from negligent hiring for responsible entities that follow the rules. The language is similar to language found in the current versions of rules 173-9-01 and 173-14-14 of the Administrative Code.

- **New Rule 173-9-10 Disciplinary actions:** This proposed new rule demonstrates that ODA may take action against responsible entities who provide direct care if they do not comply with Chapter 173-9 of the Administrative Code.

- **Current Rule 173-9-01 (for Rescission) Criminal records checks:** ODA is rescinding this longer, multi-topic rule to replace it with 10 shorter, 1-topic rules.

- **Rules Requiring Collateral Amendments:**

  - **New Rule 173-14-14 Staffing requirements and staff qualifications:** This proposed new rule contains language that is identical to the current rule on staffing requirements and staff qualifications except that the criminal records check language has been extracted from the rule. All criminal records check requirements in rules are now found in proposed new Chapter 173-9 of the Administrative Code.

  - **Current Rule 173-14-14 (for Rescission) Staffing requirements and staff qualifications:** ODA is proposing to rescind this rule. The lengthy language in the rule on criminal records checks has been amended and is now incorporated into Chapter 173-9 of the Administrative Code.

  - **Amended Rule 173-3-06 Mandatory clauses:** ODA is amending paragraph (A)(17) of the rule to change references to Chapter 173-9 of the Administrative Code.

  - **Amended Rule 173-39-02 Conditions of participation:** ODA is amending paragraphs (B)(4)(k), (C)(4)(d), (D)(4)(k), (E)(4)(g), and

(F)(4)(k) of the rule to change references to Chapter 173-9 of the Administrative Code.

- **Amended Rule 173-39-05 Disciplinary actions:**
  - ODA is amending paragraphs (B)(2)(a)(ii) and (B)(3)(a)(iii) of the rule to change references to Chapter 173-9 of the Administrative Code.
  - ODA is also taking this opportunity to move the language from paragraph (C)(1)(b) of the rule to rule 173-9-05.1 of the Administrative Code.
  - ODA is proposing to add H.B.487's amended language in division (E)(2)(c) of section 173.394 of the Revised Code to paragraph (C)(1)(c) of the rule.
- **Amended Rule 173-39-05.1 Non-disciplinary actions resulting in certification revocation:** ODA is proposing to add the language it struck from paragraph (C)(1)(b) of rule 173-39-05 of the Administrative Code and also inserting "voluntarily" before "failed to enter into or renew a provider agreement."
- **Amended Rule 173-39-07 Appeal of denial of certification and proposed disciplinary actions:** ODA is proposing to amend this rule to use terminology that is consistent with Chapter 173-9 of the Administrative Code: "disciplinary action" (not "sanction") and "ODA" not "the department."
- **Amended Rule 173-40-06 Consumer choices and responsibilities:** ODA is amending paragraph (B)(1)(b)(iii) of the rule to change references to Chapter 173-9 of the Administrative Code.
- **Amended Rule 173-42-06 Consumer choices and responsibilities:** ODA is amending paragraph (B)(1)(b)(iii) of the rule to change references to Chapter 173-9 of the Administrative Code.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

- The primary statutes that authorize (and mandate) ODA to adopt criminal records check rules are sections 173.27 and 173.394 of the Revised Code. H.B.487 (129th G.A.) amended both of these statutes.
- Sections 173.01, 173.02 of the Revised Code give ODA general authority to adopt the rules.

- Also, for certain persons or programs, sections 173.04, 173.16, 173.391, 173.392, 173.402, 173.403, 173.431, and 5111.89 of the Revised Code authorize ODA adopt rules. These statutes authorize the adoption of rules in which ODA made collateral amendments.

3. **Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**
   If yes, please briefly explain the source and substance of the federal requirement.

   For providers of services under ODA's programs that use Medicaid funds, 42 C.F.R. 455.414, 455.434, and 455.436 require the Dept. of Job and Family Services to ensure that each provider's criminal record and record in certain national databases is checked at least every five years. 42 C.F.R. 455.452 specifically allows the state to establish "provider screening methods in addition to or more stringent than those required by this subpart." Nevertheless, ODA and the Departments of Developmental Disabilities, Health, and Job and Family Services settled on a five-year requirement which is no more frequent than that required under 42 C.F.R. 455.414.

   For providers of ombudsman services or direct care under ODA's programs that do not use Medicaid funds, Sections 305(a)(1)(C) and 712(a)(5)(D) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended, and 45 C.F.R. 1321.11 give ODA federal authority to adopt rules, but those statutes do not require ODA to adopt rules regarding criminal records checks.

   Sections 173.27 and 173.394 of the Revised Code do not treat any provider differently regarding criminal records checks, whether they provide ombudsman services, direct care under a Medicaid-funded program, direct care under a non-Medicaid program, or—as is most common, direct care under both Medicaid and non-Medicaid programs.

4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

   ODA's proposed new criminal records check rules are not the result of a federal requirement.

5. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

   H.B.487's amendments to sections 173.27 and 173.394 of the Revised Code *require* ODA to adopt rules to implement the sections. As stated by Attorney General Mike DeWine in his letter of December 21, 2011, "[I]t is paramount to the safety of ... vulnerable citizens that we prohibit certain types of criminals from entering into patients' homes." He also said, "I urge you to work together to create one set of comprehensive rules in a manner that eliminates loopholes and provides full

protection to Ohio's most vulnerable citizens." In Greg Moody's response, he said, "These efforts will align with broader OHT initiatives to assure the safety and quality of home and community based services that are critical to health transformation in Ohio." (See "ATTACHMENTS FOR QUESTION 5" for the entirety of each letter.)

6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

   ODA (and ODA's designees) will monitor the responsible entities for compliance.

Development of the Regulation

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**
   If applicable, please include the date and medium by which the stakeholders were initially contacted.

   ODA included a significant number of stakeholders.

   On March 13, 2012, ODA made a presentation to a meeting of the Ohio Association of Area Agencies on Aging concerning (then pending) H.B.487's impact on statutes and rules that would affect ODA's programs. The presentation included criminal records checks.

   Working with the Governor's Office of Health Transformation, ODA conducted teleconference meetings with a selection of associations that represent community-based long-term care providers, including:

   - Ohio Council for Home Care and Hospice (March 12, 2012)
   - Ohio Association of Senior Centers (March 16, 2012)
   - Ohio Assisted Living Association (March 19 and 26, 2012)

   In June and July, 2012, ODA surveyed a variety of providers for ODA's programs to assess the impact of H.B.487 and the developing rules. The providers who supplied detailed information in response were as follows:

   - Home Care by Black Stone
   - Heritage Day Health
   - Licking County Aging Program, Inc.
   - Lifecare Alliance
   - Mobile Meals of Toledo
   - Simply-EZ Home Delivered Meals
   - Senior Resource Connection
   - Valued Relationships, Inc.
   - Wesley Community Services
   - Wood County Committee on Aging, Inc.
   - The Woodlands of Columbus

(See "ATTACHMENTS FOR QUESTIONS 7, 8, & 14" to view the analyses.)

The Office of Health Transformation also conducted three stakeholder meetings for responsible entities and other interested parties on July 17, 2012, August 6, 2012, and August 22, 2012. A sampling of the stakeholders who participated in the meetings is as follows:

- Ohio Assn. of Area Agencies on Aging (and certain area agencies on aging)
- Ohio Council for Home Care and Hospice
- Ohio Assisted Living Association
- Midwest Care Alliance
- National Church Residences (Heritage Day Health)
- Home Care by Black Stone
- Wesley Community Services
- Interim Health Care

Leading up to the public-comment period, ODA had fielded questions and concerns via email and telephone from the providers and associations mentioned above, plus Philips (April-May, 2012), Private Eyes, Inc. (May, 2012), the Medical Alert Monitoring Assn. (May, 2012).

From August 31, 2012 to September 20, 2012, ODA posted the rule proposals on its website to seek public comments. During that time, ODA received 106 comments.

On September 13, 2012, ODA participated in a discussion about the rules with the board meeting of the Ohio Association of Senior Centers.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

ODA's surveys of providers in June and July led to the development of specific provider impact analyses. These analyses revealed the total number of, and the variety of, employees each provider employed that would require ongoing criminal records checks if our proposed new rules required ongoing criminal records checks. The analyses also estimated the total direct costs (*i.e.*, Bureau of Criminal Investigation fee + impression costs) and also the degree of overlapping regulation on the same employees by ODA and the Depts. of Developmental Disabilities, Health, and Job and Family Services. (See "ATTACHMENTS FOR QUESTIONS 7, 8, & 14" to view the analyses.)

The input of stakeholders through the analyses, OHT stakeholder meetings, a letter from Home Care by Black Stone (See "ATTACHMENTS FOR QUESTIONS 7, 8, & 14."), and email from stakeholders helped ODA and the Depts. of Developmental Disabilities, Health, and Job and Family Services come to the following conclusions regarding the proposed new rules:

- Many providers are regulated by more than one of the four state agencies. Homogenizing the statutes and rules so that one check of criminal records can satisfy all four sets of criteria at once reduces unnecessary burdens.

- The exclusionary periods found in proposed new rule 173-9-07 of the Administrative Code are a favorable alternative to the current, subjective personal character standards.

- The direct and indirect costs of conducting criminal records checks are considerable. Stakeholders, as a result, favored a frequency of five years for rechecking the records of staff, rather than three years.

- The cost of checking all employees' criminal records at once would be a greater administrative burden than phasing-in the checks. As a result, each state agency's rules now have phase-in language. (See paragraph (B)(1)(a) of proposed ODA's new rule 173-9-04 of the Administrative Code.)

- Certain types of direct care pose a significantly reduced level of danger to the consumers than direct care that involves being alone in the home of the consumer on a regular basis. As a result, ODA decided to not require a criminal records check every five years for an employee if the only type of direct care the employee provided was:

    - Delivering a home-delivered meal to the consumer, which involves stopping at the homes of numerous consumers in a delivery route for a brief moment of time.

    - Having access to consumer's personal records. The providers who commented had office staff in mind, but this exception also exempts employees of the central monitoring stations (*i.e.*, call center) of personal emergency response systems from every-five-year checks. These employees never enter a consumer's home. (The Department of Health has adopted a similar exemption.)

    - Providing a once-ever service. There is no reason to require ongoing criminal records checks as a condition of working with ODA if the service is a once-ever service.

- ODA fine-tuned language in the rough drafts of the proposed new rules confused stakeholders.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

ODA and the Depts. of Developmental Disabilities, Health, and Job and Family Services referred to the following research when developing the exclusionary

periods (*i.e.*, "tiers) in found in proposed new rule 173-9-07 of the Administrative Code and the other three state agencies' corresponding rules:

- Blumstein, A., and K. Nakamura. "Redemption in the Presence of Widespread Criminal Background Checks." Criminology. *Vol.*, 47. © May, 2009. *Pp.*, 327-359. See also, http://www.nij.gov/journals/263/redemption.htm. Blumstein and Nakamura also made a presentation of their research to the Ex-Offender Re-Entry Coalition on September 16, 2010. State staff on this project attended the presentation.

- "Scarlet Letters and Recidivism: Does an Old Crime Predict Future Offending?" Criminology and Public Policy. *Vol.*, 5. © 2006. *Pp.*, 493-522.

- "Enduring Risk: Does an Old Crime Predict Future Offending?" Crime and Delinquency. *Vol.*, 53. © 2007. *Pp.*, 64-83.

- "When Do Ex-Offenders Become Like Non-Offenders?" Howard Journal of Criminal Justice. *Vol.*, 48. © 2009. *Pp.*, 473-487.

- "The Predictive Value of Criminal Background Checks: Do Age and Criminal History Affect Time To Redemption?" Criminology. *Vol.*, 49. © 2011. *Pp.*, 27-60.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

H.B.487's amendments to sections 173.27 and 173.394 of the Revised Code require ODA to adopt rules and set the framework for the rules, and did not give ODA an option on the matter. Also, division (B) of section 751.31 of the H.B.487 required ODA and the Depts. of Developmental Disabilities, Health, and Job and Family Services to "[m]ake the policies established by the rules as similar as possible." Thus, in areas where the state agencies did have options, the agencies chose to adopt rules similar to one another's rules.

As stated for question #8, the state agencies considered three alternative regulations regarding checks on current employees:

- The state agencies had originally proposed requiring checks every three years which was the frequency of the checks on current employees working for agency providers in programs under the Dept. of Developmental Disabilities. After listening to providers share the direct and indirect costs of conducting criminal records checks, the state agencies reduced the frequency to once every five years. This five-year requirement matches the frequency at which the Dept. of Job and Family Services will screen each Medicaid provider in Ohio according to the new rules spurned from the Patient

Protection and Affordable Care Act. (*cf.*, Rule 5101:3-1-17.8 of the Administrative Code and 42 C.F.R. 455.414, 455.434, and 455.436)

- The state agencies considered adopting the requirement to check current employees at once when it seemed that would create less of an administrative burden on providers than checking criminal records throughout the year. However, providers thought otherwise and asked for a phase-in based upon anniversary dates of hire.

- The state agencies had originally proposed to require criminal records checks every five years for every type of employee. However, some providers explained that providers of routine, in-home, alone services such as personal care pose the greatest danger to the consumer while other services such as delivering home-delivered meals and office work pose little danger. As a result, ODA decided to not require a criminal records check every five years for an employee if the only type of direct care the employee provided was:

    - Delivering a home-delivered meal to the consumer, which involves stopping at the homes of numerous consumers in a delivery route for a brief moment of time.

    - Having access to consumer's personal records. The providers who commented had office staff in mind, but this exception also exempts employees of the central monitoring stations (*i.e.*, call center) of personal emergency response systems from every-five-year checks. These employees never enter a consumer's home. (The Department of Health has adopted a similar exemption.)

    - Providing a once-ever service. There is no reason to require ongoing criminal records checks as a condition of working with ODA if the service is a once-ever service.

11. Did the Agency specifically consider a performance-based regulation? Please explain.
Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

H.B.487's amendments to sections 173.27 and 173.394 of the Revised Code require checks on applicants and employees who provide ombudsman services and direct care regardless of the performance of the provider that employs them.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

Division (B) of section 751.31 of H.B.487 *requires* ODA and the Depts. of Developmental Disabilities, Health, and Job and Family Services to "make the policies established by the rules as similar as possible." Each state agency has rules to regulate its programs, but often one provider may be providing services that are

reimbursed by more than one state agency's programs. Thus, in this case, homogenizing the proposed new rules, would *decrease* the regulatory burden because the handling of one criminal record for an employee is the same under all four state agencies' rules.

13. **Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

    ODA posts all proposed and currently-effective rules on its website. (http://aging.ohio.gov/information/rules/default.aspx) Before a rule takes effect, ODA posts it on its website and sends an email to any subscriber of our rule notification service.

    ODA will work with its designees (area agencies on aging, PASSPORT administrative agencies, and regional long-term care ombudsman offices) to ensure that the regulation is applied uniformly.

    ODA and its designees will also monitor the providers for compliance.

    - According to rule 173-39-02 of the Administrative Code, a condition of being an ODA-certified provider is allowing ODA or the PASSPORT administrative agency to monitor the provider.

    - According to rule 173-3-06 of the Administrative Code, a mandatory clause for every contract a non-certified provider enters into with an area agency on aging allows ODA and the area agency on aging to monitor the provider.

    - According to rule 173-14-24 of the Administrative Code, each regional long-term care ombudsman office is required to allow the state-long term care ombudsman office to conduct reviews of its compliance with state laws and regulations.

Adverse Impact to Business

14. **Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

    a. **Identify the scope of the impacted business community;**

    Any provider of direct care in a program administered by the Ohio Dept. of Aging is subject to the criminal records check rules in proposed new Chapter 173-9 of the Administrative Code. Proposed new rule 173-9-01 of the Administrative Code defines "direct care" as "any in-person contact with one or more consumers who receive a community-based long-term care service or any access to a consumer's personal property or personal records." There are many types of direct-care providers, including:

- Adult day service.
- Assisted living.
- Chore service.
- Community transition service.
- Congregate nutrition programs (*e.g.*, a senior center dining hall)
- Enhanced community living service.
- Grocery shopping assistance service.
- Home care attendant service (a consumer-directed service)
- Home-delivered meals.
- Home maintenance service.
- Homemaker service.
- Home medical equipment.
- Home modification service. (*e.g.*, wheelchair ramps)
- Home repair service. (*e.g.*, a plumber)
- Independent living assistance service.
- Nutrition consultation service.
- Nutrition education.
- Nutrition health screening.
- Personal care service.
- Personal emergency response systems.
- Pest control.
- Restaurant and Grocery Meal Service (alternative meal service)
- Social work/counseling service.
- Transportation services (medical and non-medical).

Because the employees of the providers of these services may provide service to ODA's programs and also the programs of the Depts. of Developmental Disabilities, Health, and Job and Family Services, the four state agencies looked for a way to count employees that would not result in duplicate figures. The agencies worked with Keith Ewald, Ph.D., a workforce analyst for the Office of Workforce Development. Mr. Ewald developed a sound estimate of the number of direct care workers in Ohio using Bureau of Labor Statistics figures. In his report, entitled "Estimation of Employment of Direct Service Providers, Home-and Community-Based Settings, For the Governor's Office of Health Transformation," Mr. Ewald estimated that the total number of direct-care employees in Ohio is 93,910. (See "ATTACHMENTS FOR QUESTIONS 7, 8, & 14.")

Additionally, ODA surveyed a variety of providers of direct care for ODA's program to get a case-by-case perspective. (See "ATTACHMENTS FOR QUESTIONS 7, 8, & 14.")

Providers of ombudsman services and case management are operating as ODA's designees and are, therefore, impacts to ombudsman services and case management are considered in item #15 on the rule summary and fiscal

analysis, not in the business impact analysis. Funds for such services are ODA administrative funds which the General Assembly appropriates to ODA.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

The direct adverse impacts are fees. There indirect adverse impacts are lost jobs and administrative expenses.

c. Quantify the expected adverse impact from the regulation.
The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

The direct adverse impacts are the $22 fees that each responsible entity (*i.e.*, employer) pays to the Bureau of Criminal Investigation plus the impression costs that go to the fingerprint takers (*e.g.*, license agency, county sheriff's office, city police). For example, the Ohio Attorney General's online WebCheck® locator says that the Cincinnati BMV charges $32 for a criminal records check, which is $22 (for BCI) plus $10 (for the BMV).

Using the Cincinnati BMV's prices, it would cost the direct-care industry in Ohio just over $3-million to conduct a round of criminal records checks on each of the 93,910 direct-care employees in Ohio, which is $2,066,020 (for BCI) plus $939,100 (for the BMV).

Additionally, ODA found from its survey of a variety of providers that the experience would greatly vary by the type of provider and volume of employees. For example (using the Cincinnati BMV's prices):

- Home Care by Black Stone has 1,256 direct-care employees who provide personal care services. ODA estimates that it would cost Black Stone $40,000 to conduct a round of criminal records checks on each of these employees.

- Wesley Community Services has 97 direct-care employees who provide either personal care services, transportation, or delivery of home-delivered meals. ODA had estimated that it would cost Wesley $3,104 to conduct a round of criminal records checks on each of these employees. However, now that ODA is proposing in rule 173-9-04 to exempt those who only deliver meals from being checked as current employees, ODA estimates that on 65 direct-care employees require criminal records checks. It would cost Wesley $2,080 to conduct a round of criminal records checks on each of these employees.

There are also indirect adverse impacts. As noted by conversations with providers, one impact of H.B.487's great increase in disqualifying offenses from 55 to 129 is that a current employee with a criminal record may lose his or her job. ODA and the Depts. of Developmental Disabilities, Health, and Job and Family Services have proposed language like that in ODA's proposed new rule 173-9-07 of the Administrative Code. The new language will allow people with certain long-ago disqualifying offenses on their criminal records to continue to work in a direct-care position. Additionally, ODA and the other three state agencies added language to the same rules that allow a person with a disqualifying offense on his or her record that is not long-ago to work—even if the rules would otherwise disqualify him or her—if a county court of common pleas or the Dept. of Rehabilitations and Corrections can grant the person one of two certificates. This will alleviate the potential job-loss situation.

Also, as indicated in a letter from Home Care by Black Stone (See "ATTACHMENTS FOR QUESTIONS 7, 8, & 14."), checking the records of current employees will require new administrative costs.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Based upon the Ohio Attorney General's concerns over the safety of vulnerable Ohioans who receive in-home care services, and because H.B.487 implemented the attorney general's concerns, ODA has determined that the intent to ensure safety and comply with our state's laws outweighs the costs. Even so, ODA and the three other state agencies reduced the adverse impact by require less-frequent checks on current employees, by phasing in the checks on current employees, and by eliminating certain low-risk types of direct-care staff from ongoing checks all together.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Sections 173.27 and 173.394 of the Revised Code do not allow for alternative means to comply with the statutes. For example, for the purposes of sections 173.27 and 173.394 of the Revised Code, a provider may not use a criminal records report obtained from a private company in lieu of the reports obtained from the Bureau of Criminal Investigation. The rules reflect this as well.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Section 119.14 of the Revised Code establishes the exemption from penalties for first-time paperwork violations. That general statute does not override the specific criminal records requirements in sections 173.27 and 173.394 of the Revised Code. Therefore, not obtaining a criminal records report is not a paperwork violation. Hiring a person with a disqualifying offense is not a paperwork violation. Furthermore, section 173.391 of the Revised Code states that ODA may enact disciplinary measures upon a provider who violates section 173.394 of the Revised Code and makes no mention of a first-time paperwork violation.

18. What resources are available to assist small businesses with compliance of the regulation?

The staff at area agencies on aging (AAAs), PASSPORT administrative agencies (PAAs), and ODA are available to help direct-care providers of any size with their questions about the statutes and rules. Direct-care providers may address their questions to the AAAs, PAAs, or ODA, including ODA's regulatory ombudsman.

Additionally, the Ohio Attorney General's Bureau of Criminal Investigation can assist providers of ombudsman services and direct-care providers of any size with questions about obtaining and reading criminal records on their applicants and employees.

ATTACHMENTS FOR QUESTION 5

117

MIKE DEWINE
* OHIO ATTORNEY GENERAL *

Administration
Office 614-466-4320
Fax 614-466-5087

30 E. Broad Street, 17th Fl
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

December 21, 2011

Michael B. Colbert, Director
Ohio Department of Job and Family Services
30 E. Broad Street, 32nd Floor
Columbus, Ohio 43215

Bonnie Kantor-Burman, Director
Ohio Department of Aging
50 W. Broad Street
9th Floor
Columbus, Ohio 43215

Theodore E. Wymyslo, M.D., Director
Ohio Department of Health
246 N. High Street, 7th Floor
Columbus, Ohio 43215

Re: Rules governing disqualifying criminal convictions in the Medicaid program

Dear Directors:

It has recently come to my attention that there are major gaps in the regulations regarding the employment of convicted criminals in the home health and transportation areas of the Medicaid program. I believe that persons with certain types of criminal convictions should never enter into situations where they are alone with patients. I realize that each of your agencies recognizes this problem and has rules that attempt to provide protection, but I believe that a more comprehensive approach is needed.

The problem begins with the fact that there are three different sets of rules: The first set is an Ohio Department of Job and Family Services ("ODJFS") rule governing care givers in the employ of non-Medicare certified home health agency providers, non-agency providers, and transportation workers; the second set is an Ohio Department of Health ("ODH") rule governing care givers in the employ of Medicare certified home health agencies; and the third set is an Ohio Department of Aging ("ODA") rule governing providers in the PASSPORT program.

Each of these rules excludes persons with certain named criminal convictions from working as care givers in home health and transportation. As the very existence of these rules indicates, it is paramount to the safety of these vulnerable citizens that we prohibit certain types of criminals from entering into patients' homes. Typically these rules list crimes of violence, sexual misconduct, and theft as disqualifying offenses, all for obvious reasons.

Unfortunately, in addition to having three sets of rules, these rules have deficiencies that threaten the safety of some of our most vulnerable citizens. Some examples:

- The ODH rules do not prevent convicted thieves from caring for minors.

- The ODH rules prohibit workers with certain convictions from working with minors and with persons over 60 years of age. However, these rules exclude no one from working with patients between the ages of 18 and 60. We have found instances where this loophole has allowed individuals with serious felonies to work as home health care givers.

- The ODH and ODA rules do not exclude anyone convicted of "attempt." Thus a person convicted of attempted rape or attempted murder is not excluded. The ODA rules permit persons convicted of manslaughter if the conviction was discharged at least five years earlier.

- All of the rules allow for "rehabilitation" or other exceptions. As an example, these rules have been found to allow for persons currently on probation for drug and theft offenses to be considered "rehabilitated." In another example, the ODH and ODA rules only prohibit employment of persons convicted of multiple theft offenses—one theft offense is allowed. In general, these rules are vague and create loopholes.

- The ODJFS and ODA rules only apply to a person's employment application. When a person is convicted of an otherwise disqualifying offense after their employment begins, they are not disqualified. There is no requirement that agency employees have their records checked at any time after employment has started.

- All of the rules only require a record check for in-state convictions if a person has lived in Ohio for at least the past five years (based upon a representation by the applicant). As a result, out-of-state and federal convictions are missed. We recently discovered a convicted cocaine dealer providing medical transportation services because his in-state record check did not reveal his federal conviction.

I urge you to work together to create one set of comprehensive rules, and to create those rules in a manner that eliminates loopholes and provides full protection to Ohio's most vulnerable citizens. My office is ready, willing and able to assist in this effort. I am prepared to designate a team of lawyers to assist with rule drafting and analysis, and to provide any other needed legal advice to address these gaps and inconsistencies.

Thank you for your attention to this very important issue.

Very respectfully yours,

Mike DeWine
Ohio Attorney General

cc: D. Michael Grodhaus

Ohio | Governor's Office of Health Transformation

John R. Kasich, Governor
Greg Moody, Director

January 9, 2012

The Honorable Mike DeWine
Ohio Attorney General
30 E. Broad St., 14th Floor
Columbus, OH 43215

Dear Attorney General DeWine,

I am writing in response to your letter of December 21, 2011, to Directors Colbert, Wymyslo, and Kantor-Burman concerning rules governing disqualifying criminal convictions in the Medicaid program. Because the issues you raise cross multiple state agency jurisdictions, the Governor's Office of Health Transformation (OHT) will take a leadership role and serve as your point of contact to address the concerns you have raised.

We have convened a team of staff in the Departments of Aging, Health, Job and Family Services, and Rehabilitation and Corrections to quickly review the rules currently in place that govern the disqualification of persons with criminal convictions from participating in the Medicaid home health and transportation programs, and to identify actions necessary to close any identified gaps in these rules and to assure that the revised provisions are consistent across the programs. These efforts will align with broader OHT initiatives to assure the safety and quality of home and community based services that are critical to health transformation in Ohio.

We welcome the opportunity to work with you and obtain comments from you and your staff on draft rules crafted by our team. As our group's work proceeds, we will contact you to get your office's thoughts on our draft rules. Thank you for bringing these concerns to our attention.

Sincerely,

Greg Moody, Director
Office of Health Transformation

ATTACHMENTS FOR QUESTIONS 7, 8, & 14

Ohio | Department of Aging

John Kasich, Governor
Bonnie Kantor-Burman, Director

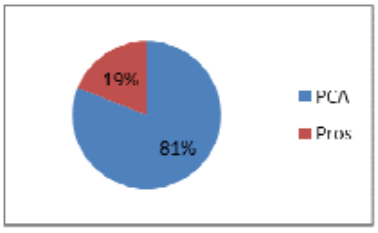
SPECIFIC PROVIDER IMPACT ANALYSIS

July 6, 2012

BLACK STONE
8280 Montgomery Rd.
Cincinnati, OH 45236
http://www.blackstonehc.com/

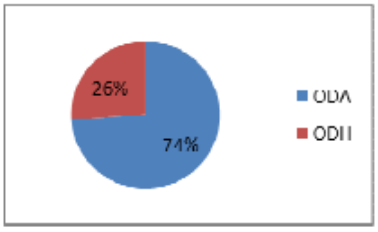
Contacts: David Tramontana and Jenny Sand

BLACK STONE'S DIRECT-CARE EMPLOYEES



DIRECT-CARE POSITION	EMPLOYEES
Personal care aide (PCA)	1018
Professionals (RN, LPN, PT, OT, *etc.*)	238
Total	1256

STATE AGENCIES WHO MONITOR BLACK STONE'S DIRECT-CARE EMPLOYEE SCREENING



STATE AGENCY	H.B.487 AMENDED	PROGRAMS/PROVIDERS	CONSUMERS SERVED
ODA	§173.27	Ombudsman	NA
ODA	§173.394	Any programs using ODA-administered funds (Medicaid and non-Medicaid)	3,125
ODH	§3701.881	Medicare-certified home health care	1,095
JFS	§5111.033	Any JFS-admin. Medicaid-waiver program (agency provider).	0
JFS	§5111.034	Any JFS-admin. Medicaid-waiver program (independent provider).	NA
DoDD	§5123.081	DoDD, county boards, and providers.	0

BLACK STONE'S COSTS

- The Ohio Attorney General's WebCheck® locator says the Cincinnati BMV charges $32.00 for each BCI criminal records check. It would cost Black Stone $40,192.00 each time it used the Cincinnati BMV to check its 1256 direct-care employees.

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Columbus, OH 43215-3363 U.S.A.
www.aging.ohio.gov

614-466-5500 (Main)
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DIAL 711 (TTY)

- Due to the large number of employees, Black Stone could need to employ another administrator to manage year-round screenings.
- The homogenization of statutes and rules would create regulatory savings for Black Stone.

NOTES

Breakdown of the 3,125 consumers Black Stone serves under programs that use ODA-administered funding—even if combined with local levy funding (*e.g.*, ComCare, Franklin County Senior Options):

1,981	Local levy funding
1,144	PASSPORT Program

BACKGROUND

On January 1, 2013, H.B. № 487's reforms to the screening requirements for direct-care employees will take effect. To comply with the Common-Sense Initiative, ODA must assess the adverse impact upon Ohio businesses before filing rule proposals with the Joint Committee on Agency Rule Review. Because the spirit of the Common-Sense Initiative involves contacting Ohio businesses to engage them in the assessment of adverse impacts and developing rule proposals, ODA contacted a variety of providers to produce a series of specific-provider impact analyses.

One of H.B.487's reforms gives ODA and the Depts. of Developmental Disabilities (DoDD), Health (ODH), and Job and Family Services (JFS) authority to require ongoing screenings (*e.g.*, annual, every three years) of current employees. ODA worked with the Office of Health Transformation and other state agencies to assess much of the adverse impact by using statewide NAICS employment statistics. The statewide statistics counted certain types of direct-care employees (*e.g.*, personal care aides) which will help to estimate the cost of a round of direct-care screenings on those professions. However, the statewide statistics did not capture other types of direct-care employees (*e.g.*, delivery persons, drivers, installers). Therefore, ODA asked each provider that it contacted to breakdown its paid direct-care workforce. This information allows ODA to compliment the statewide statistics by estimating the cost of a round of direct-care employee screening for providers that employ persons in professions not captured by statewide statistics.

Another of H.B.487's reforms homogenizes ODA's, DoDD's, ODH's and JFS' screening requirements. ODA asked each provider that it contacted questions to determine if ODA, DoDD, ODH, or JFS has overlapping authority to regulate the provider's direct-care employee screening. This information allows ODA to estimate if our effort to homogenize statutes and rules will bring regulatory relief.

For more information, please contact Tom Simmons, ODA's policy manager, at rules@age.state.oh.us.

Ohio | Department of Aging

John Kasich, Governor
Bonnie Kantor-Burman, Director

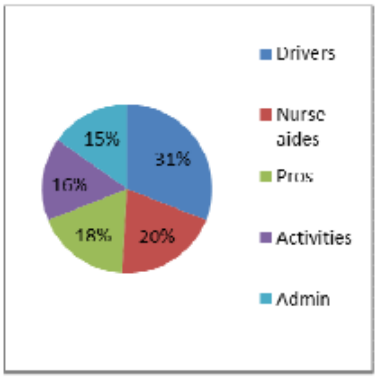
SPECIFIC PROVIDER IMPACT ANALYSIS

July 6, 2012

HERITAGE DAY HEALTH
(National Church Residences Center for Senior Health)
3341 E. Livingston Ave.
Columbus, OH 43227
www.heritagedayhealth.org

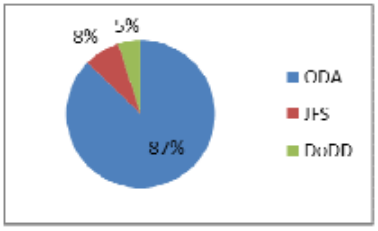
Contact: Erica Drewry, Vice President

HERITAGE'S DIRECT-CARE EMPLOYEES



DIRECT-CARE POSITION	EMPLOYEES
Driver, trans manager, and maintenance tech	45
Nurse aide	29
Professionals (RN, RN manager, LPN, social worker)	26
Activity assistants and activity directors	23
Administrative and managerial	22
Total	145

STATE AGENCIES WHO MONITOR HERITAGE'S DIRECT-CARE EMPLOYEE SCREENING



STATE AGENCY	H.B.487 AMENDED	PROGRAMS/PROVIDERS	CONSUMERS SERVED
ODA	§173.27	Ombudsman	NA
ODA	§173.394	Any programs using ODA-administered funds (Medicaid and non-Medicaid)	424
ODH	§3701.881	Medicare-certified home health care	0
JFS	§5111.033	Any JFS-admin. Medicaid-waiver program (agency provider).	38
JFS	§5111.034	Any JFS-admin. Medicaid-waiver program (independent provider).	NA
DoDD	§5123.081	DoDD, county boards, and providers.	24

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HERITAGE'S COSTS

- The Ohio Attorney General's WebCheck® locator says the Columbus Police Dept. charges $36.00 for each BCI criminal records check. It would cost Heritage $5,400 each time it used the Columbus Police Dept. to check its 145 direct-care employees.
- The homogenization of statutes and rules would create regulatory savings for Heritage.

NOTES

- All of Heritage's employees, including administrative staff and site managers, have contact with consumers, with the exception of its 5 housekeepers. Heritage considers all employees, minus the 5 housekeepers, to be direct-care employees.
- Here is the breakdown of the 424 consumers the provider serves under programs that use ODA-administered funding (even if combined with local levy funding):

228	PASSPORT
110	Franklin County Senior Options
26	Alzheimer's' Respite
21	National Family Caregiver Support
21	Senior Choices
10	Older Americans Act
8	Choices Program

BACKGROUND

On January 1, 2013, H.B. № 487's reforms to the screening requirements for direct-care employees will take effect. To comply with the Common-Sense Initiative, ODA must assess the adverse impact upon Ohio businesses before filing rule proposals with the Joint Committee on Agency Rule Review. Because the spirit of the Common-Sense Initiative involves contacting Ohio businesses to engage them in the assessment of adverse impacts and developing rule proposals, ODA contacted a variety of providers to produce a series of specific-provider impact analyses.

One of H.B.487's reforms gives ODA and the Depts. of Developmental Disabilities (DoDD), Health (ODH), and Job and Family Services (JFS) authority to require ongoing screenings (*e.g.*, annual, every three years) of current employees. ODA worked with the Office of Health Transformation and other state agencies to assess much of the adverse impact by using statewide NAICS employment statistics. The statewide statistics counted certain types of direct-care employees (*e.g.*, personal care aides) which will help to estimate the cost of a round of direct-care screenings on those professions. However, the statewide statistics did not capture other types of direct-care employees (*e.g.*, delivery persons, drivers, installers). Therefore, ODA asked each provider that it contacted to breakdown its paid direct-care workforce. This information allows ODA to compliment the statewide statistics by estimating the cost of a round of direct-care employee screening for providers that employ persons in professions not captured by statewide statistics.

Another of H.B.487's reforms homogenizes ODA's, DoDD's, ODH's and JFS' screening requirements. ODA asked each provider that it contacted questions to determine if ODA, DoDD, ODH, or JFS has overlapping authority to regulate the provider's direct-care employee screening. This information allows ODA to estimate if our effort to homogenize statutes and rules will bring regulatory relief.

For more information, please contact Tom Simmons, ODA's policy manager, at rules@age.state.oh.us.

Ohio | Department of Aging

John Kasich, Governor
Bonnie Kantor-Burman, Director

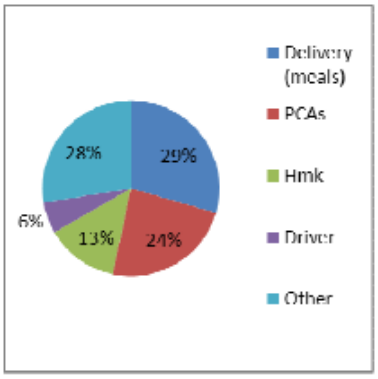
SPECIFIC PROVIDER IMPACT ANALYSIS

July 12, 2012

LICKING COUNTY AGING PROGRAM , INC. (LCAP)
1058 E. Main St.
Newark, OH 43055
http://lcap.org/

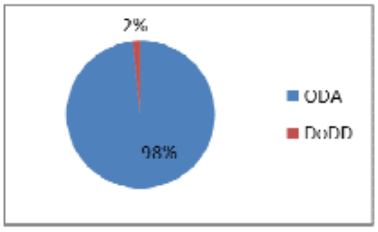
Contact: Dave Bibler, Exec. Dir.

LCAP'S DIRECT-CARE EMPLOYEES



DIRECT-CARE POSITION	EMPLOYEES
Delivery person (of meals)	31
Personal care aides	25
Homemaker and chore worker	14
Administrative	10
Food service	7
Driver (transportation service)	6
Activities	6
RN, LPN	5
Dietitian	1
Total	105

STATE AGENCIES WHO MONITOR LCAP'S DIRECT-CARE EMPLOYEE SCREENING



STATE AGENCY	H.B.487 AMENDED	PROGRAMS/PROVIDERS	CONSUMERS SERVED
ODA	§173.27	Ombudsman	NA
ODA	§173.394	Any programs using ODA-administered funds (Medicaid and non-Medicaid)	2,750
ODH	§3701.881	Medicare-certified home health care	0
JFS	§5111.033	Any JFS-admin. Medicaid-waiver program (agency provider).	0
JFS	§5111.034	Any JFS-admin. Medicaid-waiver program (independent provider).	NA
DoDD	§5123.081	DoDD, county boards, and providers.	50

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Business Impact Analysis

LCAP'S COSTS

- The Ohio Attorney General's WebCheck® locator says Executive Care in Newark charges $29.00 for each BCI criminal records check. It would cost LCAP $3,045 each time it used Executive Care to check its 105 direct-care employees.
- If LCAP furnishes services to consumers in more than one program regulated by one of the above statutes, the homogenization of statutes and rules would create regulatory savings for LCAP.

NOTES

- Here is the breakdown of the 2,750 consumers LCAP serves under programs that use ODA-administered funding (even if combined with local levy funding):

2,000	Levy + Older Americans Act funds
500	PASSPORT
250	Choices

BACKGROUND

On January 1, 2013, H.B. № 487's reforms to the screening requirements for direct-care employees will take effect. To comply with the Common-Sense Initiative, ODA must assess the adverse impact upon Ohio businesses before filing rule proposals with the Joint Committee on Agency Rule Review. Because the spirit of the Common-Sense Initiative involves contacting Ohio businesses to engage them in the assessment of adverse impacts and developing rule proposals, ODA contacted a variety of providers to produce a series of specific-provider impact analyses.

One of H.B.487's reforms gives ODA and the Depts. of Developmental Disabilities (DoDD), Health (ODH), and Job and Family Services (JFS) authority to require ongoing screenings (*e.g.*, annual, every three years) of current employees. ODA worked with the Office of Health Transformation and other state agencies to assess much of the adverse impact by using statewide NAICS employment statistics. The statewide statistics counted certain types of direct-care employees (*e.g.*, personal care aides) which will help to estimate the cost of a round of direct-care screenings on those professions. However, the statewide statistics did not capture other types of direct-care employees (*e.g.*, delivery persons, drivers, installers). Therefore, ODA asked each provider that it contacted to breakdown its paid direct-care workforce. This information allows ODA to compliment the statewide statistics by estimating the cost of a round of direct-care employee screening for providers that employ persons in professions not captured by statewide statistics.

Another of H.B.487's reforms homogenizes ODA's, DoDD's, ODH's and JFS' screening requirements. ODA asked each provider that it contacted questions to determine if ODA, DoDD, ODH, or JFS has overlapping authority to regulate the provider's direct-care employee screening. This information allows ODA to estimate if our effort to homogenize statutes and rules will bring regulatory relief.

For more information, please contact Tom Simmons, ODA's policy manager, at rules@age.state.oh.us.

Ohio | Department of Aging

John Kasich, Governor
Bonnie Kantor-Burman, Director

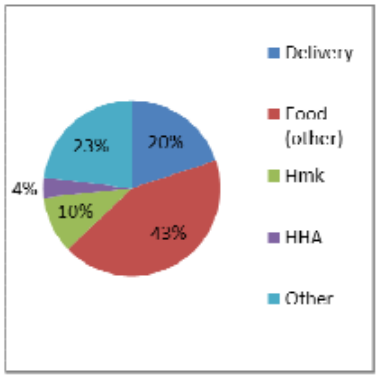
SPECIFIC PROVIDER IMPACT ANALYSIS

July 6, 2012

LIFECARE ALLIANCE
1699 W. Mound St.
Columbus, OH 43223
www.lifecarealliance.org

Contact: Charles Gehring, President & CEO

LIFECARE ALLIANCE'S DIRECT-CARE EMPLOYEES



DIRECT-CARE POSITION	EMPLOYEES
Food production	42
Delivery person (of meals)	38
Dining center coordinator	26
Homemaker (Hmk)	20
Registered nurse (RN)	12
Advancement	9
Catering	8
Home health aides (HHAs)	7
Columbus cancer clinic	6
FiscalIT	6
Dietitians	5
IMPACT safety trainer	4
Administration	3
Mammography technician	2
Human resources	2
Food pantry	1
Total	191

STATE AGENCIES WHO MONITOR LIFECARE ALLIANCE'S DIRECT-CARE EMPLOYEE SCREENING

STATE AGENCY	H.B.487 AMENDED	PROGRAMS/PROVIDERS	CONSUMERS SERVED
ODA	§173.27	Ombudsman	NA
ODA	§173.394	Any programs using ODA-administered funds (Medicaid and non-Medicaid)	Yes
ODH	§3701.881	Medicare-certified home health care	Yes
JFS	§5111.033	Any JFS-admin. Medicaid-waiver program (agency provider).	0
JFS	§5111.034	Any JFS-admin. Medicaid-waiver program (independent provider).	NA
DoDD	§5123.081	DoDD, county boards, and providers.	0

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LIFECARE ALLIANCE'S COSTS

- The Ohio Attorney General's WebCheck® locator says the Columbus Police Dept. charges $36.00 for each BCI criminal records check. It would cost Lifecare Alliance $6,876 each time it used the Columbus Police Dept. to check its 191 direct-care employees.
- The homogenization of statutes and rules would create regulatory savings for Lifecare Alliance.
- Lifecare Alliance serves many consumers enrolled in ODA programs or in county levy programs that use ODA funds (*e.g.*, Franklin County Senior Options) in part or in full.

NOTES

- Lifecare Alliance has approximately 7,000 active volunteers. Lifecare Alliance believes that it holds the record for the highest number of volunteers of any provider agency in the United States. On week days, volunteers furnish approximately 70% of Lifecare's services. On weekends and holidays, volunteers furnish 100% of Lifecare's services.
- Although state law does not require Lifecare Alliance to do so, Lifecare Alliance conducts criminal records checks on its volunteers.

BACKGROUND

On January 1, 2013, H.B. № 487's reforms to the screening requirements for direct-care employees will take effect. To comply with the Common-Sense Initiative, ODA must assess the adverse impact upon Ohio businesses before filing rule proposals with the Joint Committee on Agency Rule Review. Because the spirit of the Common-Sense Initiative involves contacting Ohio businesses to engage them in the assessment of adverse impacts and developing rule proposals, ODA contacted a variety of providers to produce a series of specific-provider impact analyses.

One of H.B.487's reforms gives ODA and the Depts. of Developmental Disabilities (DoDD), Health (ODH), and Job and Family Services (JFS) authority to require ongoing screenings (*e.g.*, annual, every three years) of current employees. ODA worked with the Office of Health Transformation and other state agencies to assess much of the adverse impact by using statewide NAICS employment statistics. The statewide statistics counted certain types of direct-care employees (*e.g.*, personal care aides) which will help to estimate the cost of a round of direct-care screenings on those professions. However, the statewide statistics did not capture other types of direct-care employees (*e.g.*, delivery persons, drivers, installers). Therefore, ODA asked each provider that it contacted to breakdown its paid direct-care workforce. This information allows ODA to compliment the statewide statistics by estimating the cost of a round of direct-care employee screening for providers that employ persons in professions not captured by statewide statistics.

Another of H.B.487's reforms homogenizes ODA's, DoDD's, ODH's and JFS' screening requirements. ODA asked each provider that it contacted questions to determine if ODA, DoDD, ODH, or JFS has overlapping authority to regulate the provider's direct-care employee screening. This information allows ODA to estimate if our effort to homogenize statutes and rules will bring regulatory relief.

For more information, please contact Tom Simmons, ODA's policy manager, at rules@age.state.oh.us.

Business Impact Analysis

Ohio | Department of Aging

John Kasich, Governor
Bonnie Kantor-Burman, Director

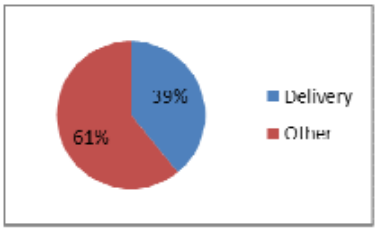
SPECIFIC PROVIDER IMPACT ANALYSIS

July 6, 2012

MOBILE MEALS OF TOLEDO
2200 Jefferson Ave.
Toledo, OH 43624
http://mobilemeals.org/

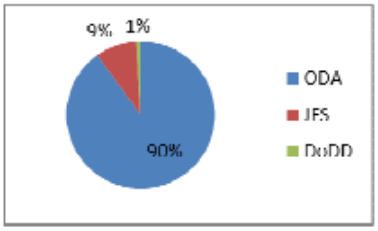
Contact: Maureen Stevens, Exec. Dir.

MOBILE MEAL'S DIRECT-CARE EMPLOYEES



DIRECT-CARE POSITION	EMPLOYEES
Delivery person (of meals)	9
Administrative and managerial	6
Volunteer coordinator	1
Diet technician	1
Kitchen staff	6
Total	23

STATE AGENCIES WHO MONITOR MOBILE MEAL'S DIRECT-CARE EMPLOYEE SCREENING



STATE AGENCY	H.B.487 AMENDED	PROGRAMS/PROVIDERS	CONSUMERS SERVED
ODA	§173.27	Ombudsman	NA
ODA	§173.394	Any programs using ODA-administered funds (Medicaid and non-Medicaid)	478
ODH	§3701.881	Medicare-certified home health care	0
JFS	§5111.033	Any JFS-admin. Medicaid-waiver program (agency provider).	48
JFS	§5111.034	Any JFS-admin. Medicaid-waiver program (independent provider).	NA
DoDD	§5123.081	DoDD, county boards, and providers.	5

MOBILE MEAL'S COSTS

- The Ohio Attorney General's WebCheck® locator says the Toledo Deputy Registrar License Bureau charges $32.00 for each BCI criminal records check. It would cost Mobile Meals $736 each time it used the deputy registrar to check its 23 direct-care employees.

50 W. Broad Street / 9th Floor
Columbus, OH 43215-3363 U.S.A.
www.aging.ohio.gov

614-466-5500 (Main)
614-466-5741 (Fax)
DIAL 711 (TTY)

- The homogenization of statutes and rules would create regulatory savings for Mobile Meals.

NOTES

- Breakdown of the 478 consumers Mobile Meals serves under programs that use ODA-administered funding:

469	PASSPORT Program
9	Choices Program

- Mobile Meals uses 500 volunteer delivery persons. §173.394 prohibits ODA from requiring a provider to perform criminal records checks on volunteers. Mobile Meals said their primary concern with reforming direct-care screening requirements is that a future reform will require screening of *volunteers*.

BACKGROUND

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For more information, please contact Tom Simmons, ODA's policy manager, at rules@age.state.oh.us.

Ohio | Department of Aging

John Kasich, Governor
Bonnie Kantor-Burman, Director

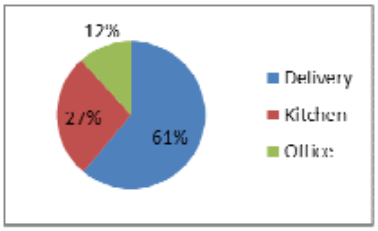
SPECIFIC PROVIDER IMPACT ANALYSIS

July 6, 2012

SIMPLY-EZ HOME DELIVERED MEALS
3593 Interchange Rd.
Columbus, OH 43204
www.simplyez.net

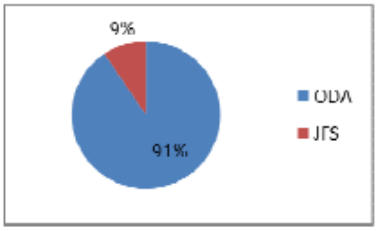
Contact: Renee Flack

SIMPLY-EZ'S DIRECT-CARE EMPLOYEES



DIRECT-CARE POSITION	EMPLOYEES
Delivery person (of meals)	63
Kitchen staff	32
Office staff	16
Total	111

STATE AGENCIES WHO MONITOR SIMPLY-EZ'S DIRECT-CARE EMPLOYEE SCREENING



STATE AGENCY	H.B.487 AMENDED	PROGRAMS/PROVIDERS	CONSUMERS SERVED
ODA	§173.27	Ombudsman	NA
ODA	§173.394	Any programs using ODA-administered funds (Medicaid and non-Medicaid)	3,124
ODH	§3701.881	Medicare-certified home health care	0
JFS	§5111.033	Any JFS-admin. Medicaid-waiver program (agency provider).	327
JFS	§5111.034	Any JFS-admin. Medicaid-waiver program (independent provider).	NA
DoDD	§5123.081	DoDD, county boards, and providers.	0

SIMPLY-EZ'S COSTS

- The Ohio Attorney General's WebCheck® locator says the Columbus Police Dept. charges $36.00 for each BCI criminal records check. It would cost Simply-EZ $3,996.00 each time it used the Columbus Police Dept. to check its 111 direct-care employees.

50 W. Broad Street / 9th Floor
Columbus, OH 43215-3363 U.S.A.
www.aging.ohio.gov

614-466-5500 (Main)
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DIAL 711 (TTY)

- The homogenization of statutes and rules would create regulatory savings for Simply EZ.

NOTES

- Simply-EZ considers its kitchen and office staff to be direct-care employees.
- Breakdown of the 3,124 consumers Simply-EZ serves under programs that use ODA-administered funding—even if combined with local levy funding (*e.g.*, ComCare, Franklin County Senior Options):

2,727	PASSPORT
379	Older Americans Act
18	Choices Program

BACKGROUND

On January 1, 2013, H.B. № 487's reforms to the screening requirements for direct-care employees will take effect. To comply with the Common-Sense Initiative, ODA must assess the adverse impact upon Ohio businesses before filing rule proposals with the Joint Committee on Agency Rule Review. Because the spirit of the Common-Sense Initiative involves contacting Ohio businesses to engage them in the assessment of adverse impacts and developing rule proposals, ODA contacted a variety of providers to produce a series of specific-provider impact analyses.

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For more information, please contact Tom Simmons, ODA's policy manager, at rules@age.state.oh.us.

Ohio | Department of Aging

John Kasich, Governor
Bonnie Kantor-Burman, Director

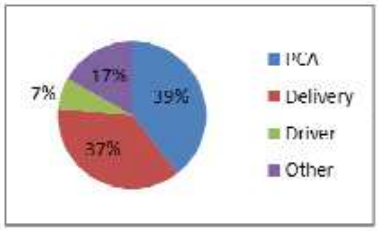
SPECIFIC PROVIDER IMPACT ANALYSIS

July 6, 2012

SENIOR RESOURCE CONNECTION (SRC)
222 Salem Ave.
Dayton, OH 45406
http://seniorresourceconnection.com/

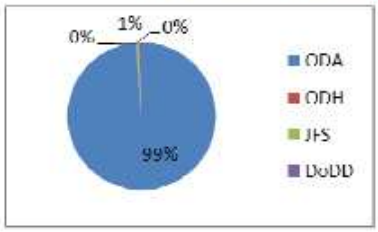
Contact: Chuck Komp

SRC'S DIRECT-CARE EMPLOYEES



DIRECT-CARE POSITION	EMPLOYEES
Personal care aide (PCA)	92
Delivery person (of meals)	86
Driver (transportation service)	16
Transportation manager	1
Nurse aide	6
RN	3
RN manager	2
Activity assistant	1
Activity director	1
Site manager	11
Social worker	6
Installer (of personal emergency response systems)	3
Administrative, including HR & finance	5
Total	233

STATE AGENCIES WHO MONITOR SRC'S DIRECT-CARE EMPLOYEE SCREENING



STATE AGENCY	H.B. 487 AMENDED	PROGRAMS/PROVIDERS	CONSUMERS SERVED
ODA	§173.27	Ombudsman	NA
ODA	§173.394	Any programs using ODA-administered funds (Medicaid and non-Medicaid)	3,171
ODH	§3701.881	Medicare-certified home health care	3
JFS	§5111.033	Any JFS-admin. Medicaid-waiver program (agency provider).	18
JFS	§5111.034	Any JFS-admin. Medicaid-waiver program (independent provider).	NA
DoDD	§5123.081	DoDD, county boards, and providers.	20

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614-466-5741 (Fax)
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SRC'S COSTS

- The Ohio Attorney General's WebCheck® locator says the Dayton Police Dept. charges $40.00 for each BCI criminal records check. It would cost SRC $9,320 each time it used the Dayton Police Dept. to check its 233 direct-care employees.
- The homogenization of statutes and rules would create regulatory savings for SRC.

- SRC's count of direct-care positions does not include kitchen staff or administrative support staff.
- SRC's figures for consumers in ODA's programs do not include the numbers of consumers in congregate dining sites, which means they may actually be much higher.
- Here is the breakdown of the 3,171 consumers SRC serves under programs that use ODA-administered funding (even if combined with local levy funding (*e.g.*, ComCare)), minus those who only use congregate dining:

1,724	Local levy programs
728	Older Americans Act
710	PASSPORT
9	Alzheimer's' Respite

BACKGROUND

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For more information, please contact Tom Simmons, ODA's policy manager, at rules@age.state.oh.us.

Business Impact Analysis

Ohio | Department of Aging

John Kasich, Governor
Bonnie Kantor-Burman, Director

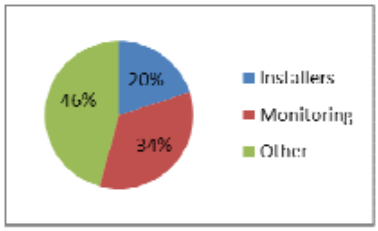
SPECIFIC PROVIDER IMPACT ANALYSIS

July 6, 2012

VALUED RELATIONSHIPS, INC. (VRI)
1400 Commerce Center Dr.
Franklin, OH 45005
www.monitoringcare.com

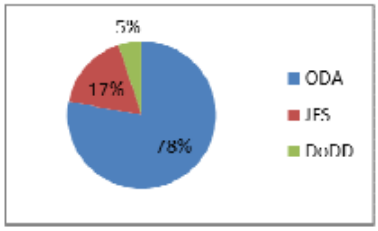
Contact: Chris Hendriksen, President

VRI'S DIRECT-CARE EMPLOYEES



DIRECT-CARE POSITION	EMPLOYEES
Installers (35 in Ohio, 160 nationwide)	35
Central monitoring station "phone" staff	60
Other staff with access to records	80
Total	175

STATE AGENCIES WHO MONITOR VRI'S DIRECT-CARE EMPLOYEE SCREENING



STATE AGENCY	H.B.487 AMENDED	PROGRAMS/PROVIDERS	CONSUMERS SERVED
ODA	§173.27	Ombudsman	NA
ODA	§173.394	Any programs using ODA-administered funds (Medicaid and non-Medicaid)	9,150
ODH	§3701.881	Medicare-certified home health care	0
JFS	§5111.033	Any JFS-admin. Medicaid-waiver program (agency provider).	2,000
JFS	§5111.034	Any JFS-admin. Medicaid-waiver program (independent provider).	NA
DoDD	§5123.081	DoDD, county boards, and providers.	600

VRI'S COSTS

- The Ohio Attorney General's WebCheck® locator says the Dayton Police Dept. charges $40.00 for each BCI criminal records check. It would cost VRI $7,000 each time it used the Dayton Police Dept. to check its 175 direct-care employees.

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- Although current law does not require providers to do so, VRI currently conducts criminal records checks on *current* employees. Compared to a provider that does not conduct checks on current employees, VRI would experience a reduced new cost associated with ongoing screening requirements.
- The homogenization of statutes and rules would create regulatory savings for VRI.

NOTES

- VRI's central monitoring staff also monitors the calls for other providers who do not have their own central monitoring stations.
- Breakdown of the 9,150 consumers VRI serves under programs that use ODA-administered funding—even if combined with local levy funding (*e.g.*, ComCare, Franklin County Senior Options):

7,150	PASSPORT
1,500	Local levy funding
150	Choices Program

BACKGROUND

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Business Impact Analysis

Ohio | Department of Aging

John Kasich, Governor
Bonnie Kantor-Burman, Director

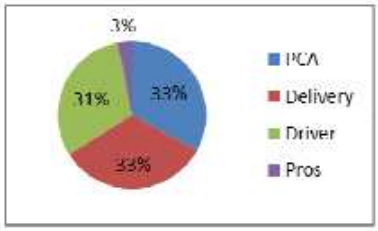
SPECIFIC PROVIDER IMPACT ANALYSIS

July 6, 2012

WESLEY COMMUNITY SERVICES
2091 Radcliff Dr.
Cincinnati, OH 45204
www.wesleycs.org

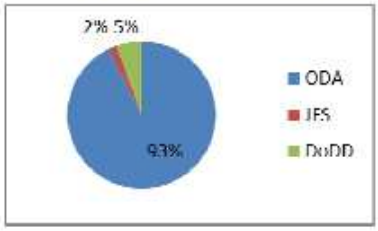
Contact: Steve Smookler, Exec. Dir.

WESLEY'S DIRECT-CARE EMPLOYEES



DIRECT-CARE POSITION	EMPLOYEES
Personal care aide (PCA)	32
Delivery person (of meals)	32
Driver (transportation service)	30
Professionals (2 RNs, 1 LPN)	3
Total	97

STATE AGENCIES WHO MONITOR WESLEY'S DIRECT-CARE EMPLOYEE SCREENING



STATE AGENCY	H.B.487 AMENDED	PROGRAMS/PROVIDERS	CONSUMERS SERVED
ODA	§173.27	Ombudsman	NA
ODA	§173.394	Any programs using ODA-administered funds (Medicaid and non-Medicaid)	2,000
ODH	§3701.881	Medicare-certified home health care	0
JFS	§5111.033	Any JFS-admin. Medicaid-waiver program (agency provider).	40
JFS	§5111.034	Any JFS-admin. Medicaid-waiver program (independent provider).	NA
DoDD	§5123.081	DoDD, county boards, and providers.	120

WESLEY'S COSTS

- The Ohio Attorney General's WebCheck® locator says the Cincinnati BMV charges $32.00 for each BCI criminal records check. It would cost Wesley $3,104 each time it used the Cincinnati BMV to check its 97 direct-care employees.

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www.aging.ohio.gov

614-466-5500 (Main)
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- The homogenization of statutes and rules would create regulatory savings for Wesley.

NOTES

- 64% of Wesley's direct-care workforce delivers consumers or meals.
- Wesley does not organize itineraries by program, so one delivery person may deliver meals along a route that serves consumers enrolled in various programs.
- Breakdown of the 2,000 consumers Wesley serves under programs that use ODA-administered funding—even if combined with local levy funding:

1,600	Older Americans Act
400	PASSPORT

BACKGROUND

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Ohio | Department of Aging

John Kasich, Governor
Bonnie Kantor-Burman, Director

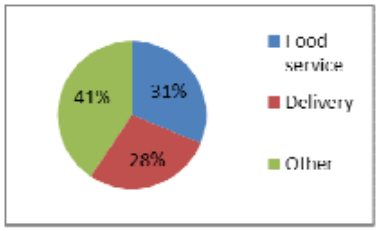
SPECIFIC PROVIDER IMPACT ANALYSIS

July 6, 2012

WOOD COUNTY COMMITTEE ON AGING, INC. (WCCOA)
305 N. Main St.
Bowling Green, OH 43402
www.wccoa.net

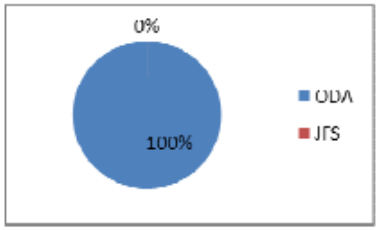
Contacts: Denise C. Niese, Exec. Dir., and Jim Stainbrook

WCCOA'S DIRECT-CARE EMPLOYEES



DIRECT-CARE POSITION	EMPLOYEES
Food service	10
Delivery person (of meals)	9
Site manager	7
Driver ("medical escort")	2
RN	2
Home-delivered meal assessor	1
Social service	1
Total	32

STATE AGENCIES WHO MONITOR WCCOA'S DIRECT-CARE EMPLOYEE SCREENING



STATE AGENCY	H.B.487 AMENDED	PROGRAMS/PROVIDERS	CONSUMERS SERVED
ODA	§173.27	Ombudsman	NA
ODA	§173.394	Any programs using ODA-administered funds (Medicaid and non-Medicaid)	1,931
ODH	§3701.881	Medicare-certified home health care	0
JFS	§5111.033	Any JFS-admin. Medicaid-waiver program (agency provider).	1
JFS	§5111.034	Any JFS-admin. Medicaid-waiver program (independent provider).	NA
DoDD	§5123.081	DoDD, county boards, and providers.	0

WCCOA'S COSTS

- The Ohio Attorney General's WebCheck® locator says the Bowling Green Deputy Registrar charges $32.00 for each BCI criminal records check. It would cost WCCOA $1,024.00 each time it used the deputy registrar to check its 32 direct-care employees.

50 W. Broad Street / 9th Floor
Columbus, OH 43215-3363 U.S.A.
www.aging.ohio.gov

614-466-5500 (Main)
614-466-5741 (Fax)
DIAL 711 (TTY)

- The homogenization of statutes and rules would create regulatory savings for WCCOA.

NOTES

Breakdown of the 1,931 consumers WCCOA serves under programs that use ODA-administered funding—even if combined with local levy funding:

1,870	Older Americans Act
61	PASSPORT Program

BACKGROUND

On January 1, 2013, H.B. № 487's reforms to the screening requirements for direct-care employees will take effect. To comply with the Common-Sense Initiative, ODA must assess the adverse impact upon Ohio businesses before filing rule proposals with the Joint Committee on Agency Rule Review. Because the spirit of the Common-Sense Initiative involves contacting Ohio businesses to engage them in the assessment of adverse impacts and developing rule proposals, ODA contacted a variety of providers to produce a series of specific-provider impact analyses.

One of H.B.487's reforms gives ODA and the Depts. of Developmental Disabilities (DoDD), Health (ODH), and Job and Family Services (JFS) authority to require ongoing screenings (*e.g.*, annual, every three years) of current employees. ODA worked with the Office of Health Transformation and other state agencies to assess much of the adverse impact by using statewide NAICS employment statistics. The statewide statistics counted certain types of direct-care employees (*e.g.*, personal care aides) which will help to estimate the cost of a round of direct-care screenings on those professions. However, the statewide statistics did not capture other types of direct-care employees (*e.g.*, delivery persons, drivers, installers). Therefore, ODA asked each provider that it contacted to breakdown its paid direct-care workforce. This information allows ODA to compliment the statewide statistics by estimating the cost of a round of direct-care employee screening for providers that employ persons in professions not captured by statewide statistics.

Another of H.B.487's reforms homogenizes ODA's, DoDD's, ODH's and JFS' screening requirements. ODA asked each provider that it contacted questions to determine if ODA, DoDD, ODH, or JFS has overlapping authority to regulate the provider's direct-care employee screening. This information allows ODA to estimate if our effort to homogenize statutes and rules will bring regulatory relief.

For more information, please contact Tom Simmons, ODA's policy manager, at rules@age.state.oh.us.

Ohio | Department of Aging

John Kasich, Governor
Bonnie Kantor-Burman, Director

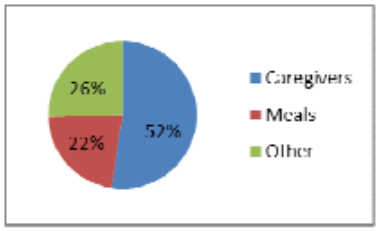
SPECIFIC PROVIDER IMPACT ANALYSIS

July 6, 2012

THE WOODLANDS OF COLUMBUS
5380 E. Broad St.
Columbus, OH 43213
http://woodlandsassistedliving.com/index.html

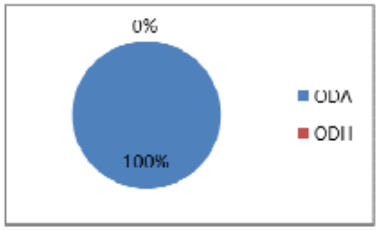
Contacts: Carol Ruff and Ashley Michalak

WOODLAND'S DIRECT-CARE EMPLOYEES



DIRECT-CARE POSITION	EMPLOYEES
Resident caregivers	33
Dining hall/kitchen staff	14
License practical nurses (LPNs)	9
Administrative/managerial	5
Activity assistants and activity directors	2
Total	63

STATE AGENCIES WHO MONITOR WOODLAND'S DIRECT-CARE EMPLOYEE SCREENING



STATE AGENCY	H.B.487 AMENDED	PROGRAMS/PROVIDERS	CONSUMERS SERVED
ODA	§173.27	Ombudsman	NA
ODA	§173.394	Any programs using ODA-administered funds (Medicaid and non-Medicaid)	36
ODH	§3701.881	Medicare-certified home health care	NA
JFS	§5111.033	Any JFS-admin. Medicaid-waiver program (agency provider).	NA
JFS	§5111.034	Any JFS-admin. Medicaid-waiver program (independent provider).	NA
DoDD	§5123.081	DoDD, county boards, and providers.	NA

WOODLAND'S COSTS

- The Ohio Attorney General's WebCheck® locator says the Columbus Police Dept. charges $36.00 for each BCI criminal records check. It would cost The Woodlands $2,268 each time it used the Columbus Police Dept. to check its 63 direct-care employees.

50 W. Broad Street / 9th Floor
Columbus, OH 43215-3363 U.S.A.
www.aging.ohio.gov

614-466-5500 (Main)
614-466-5741 (Fax)
DIAL 711 (TTY)

- The homogenization of statutes and rules would not create any regulatory savings for Woodlands.

NOTES

As a residential care facility, The Woodlands is also monitored by the Ohio Dept. of Health. However, the statutes and rules that regulate that activity are not part of this reform project.

BACKGROUND

On January 1, 2013, H.B. № 487's reforms to the screening requirements for direct-care employees will take effect. To comply with the Common-Sense Initiative, ODA must assess the adverse impact upon Ohio businesses before filing rule proposals with the Joint Committee on Agency Rule Review. Because the spirit of the Common-Sense Initiative involves contacting Ohio businesses to engage them in the assessment of adverse impacts and developing rule proposals, ODA contacted a variety of providers to produce a series of specific-provider impact analyses.

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For more information, please contact Tom Simmons, ODA's policy manager, at rules@age.state.oh.us.

Business Impact Analysis

Home Care by Black Stone
Home Healthcare • Care Advisors • MJ Nursing • Assisted Care

"Professional Care with a Personal Touch"

July 17, 2012

Governor's Office of Health Transformation

Testimony re: HB 487; screening of direct care workers

Dear Sir or Madam:

Thank you for allowing me to address my concerns related to the increased screening of direct-care workers in home and community based programs, changes related to HB 487. From my understanding, the new law will change the current requirements with a goal of increasing safety for vulnerable Ohioans. I represent Home Care by Black Stone, one of the largest PASSPORT providers in the State. We are also a provider of local senior levy programs and skilled medical care through our Medicare certified division. We serve over 4000 seniors and employ over 1200 direct care workers, aides, nurses and therapists. We focus almost entirely on the over 60 population, and agree that they are at a more elevated risk than the general population. However, I do not believe that the increased screening will have the intended benefits. As a provider, we have serious concerns about the proposed changes and its effects on the program.

Currently, the state requires us to run a background check through BCII for every new hire. If the potential employee has not lived in Ohio for five years, it also requires a check through the FBI. Black Stone voluntarily checks every employee with the FBI, to add an extra layer of screening. The total cost is $60 for each potential employee. Even with going this extra step and thoroughly verifying references, we have learned that unfortunate things can and do happen. This is an industry where workers, who are not supervised daily, are in clients' homes. These hard working employees deliver exceptional care, and earn just a few dollars more than minimum wage. In our experience, when a theft against a client occurs, the worker often has not committed an offense in the past. Further, we generally know right away about any criminal activities, through the client or the police. If an employee commits a crime, we would be notified immediately and can take appropriate actions. A yearly check would be a redundant and too late to make a difference.

The cost of annual checks will be staggering. Based on the state's minimum requirements and our current employee numbers, it would be approximately $40,000 a year. That also does not account for the administrative burden. We may have to hire a full-time employee to track and complete the tests. In addition, we would likely have to pay the direct care workers for their time to come into the office for these checks. Many of our direct care staff have full-time caseloads,

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Cincinnati, OH 45236
(513) 924-1370 • Fax (513) 924-1372

Home Office
8280 Montgomery Rd., Suite 306
Cincinnati, OH 45236
(513) 924-1370 • Fax (513) 924-1372

Assisted Care
8280 Montgomery Rd., Suite 301
Cincinnati, OH 45236
(513) 891-1127 • Fax (513) 924-3620

and we would be taking away their hours with this requirement. In total, we estimate that it would be over $75,000 a year to manage this process.

I am completely in favor of protecting our vulnerable population and some standardized background check is helpful. But we need to find an effective way to do that. Annual or frequent checks of direct care staff is not the solution. A person with a clean record can commit an offense as easily as someone who has a positive hit on their background check. The best use of resources would be to prevent those who have committed offenses from working again in the field. Too many times bad employees go from one employer to another. Our judicial system needs a streamlined way of prosecuting and recording these types of criminals as opposed to raising the cost of doing business with no tangible value.

The State has only invested in improving reimbursements twice in the last 12 years – one which was taken away. Our workforce has seen wage freezes, works with minimal benefits and has seen the cost of fuel double in the past 5 years. This unfunded mandate does minimal if anything to improve safety, but adds another expense on an industry that has been hit hard with budget cuts.

My request to the Committee today is to not further increase the burden of doing business. We are currently trying to deal with provider rate cuts and regulatory requirements, such as employer mandated health insurance; this would just be another blow to the industry.

I appreciate your time and consideration.

Sincerely,

Jenny Sard
Home Office Administrator

Estimation of Employment of Direct Service Providers, Home-and Community-Based Settings, For the Governor's Office of Health Transformation
June 7, 2012

Background: The Kasich Administration and Ohio Attorney General have identified gaps and inconsistencies in statutes and regulations governing criminal background checks and disqualifying workers who have been convicted of specific crimes from providing Medicaid home- and community-based services. The Governor's Office of Health Transformation established the Prior Criminal Convictions Work Team to resolve the gaps and inconsistencies. One element of the Work Team's scope of work is to develop rules to implement criminal background check reform provisions contained in the Mid-Biennium Review, Amended Substitute House Bill 487 (HB 487). HB 487 includes provisions that authorize certain state agencies to conduct criminal background checks post-hiring for employees in home-and community-based settings. In order to gauge the cost impact of potential options for post-hiring criminal background checks, the Work Team determined that it would be critical to know the estimated number of employees working in home-and community-based settings. The team found information related to the number of self-employed individuals in this healthcare setting from administrative records. However, similar information from employers, specific to home-and community-based settings, is not readily available.

Data issues: Information readily exists for either occupational [1] or industry employment [2] levels but these statistics are not categorized in a manner that readily reports the breakout of healthcare service employees working in a home- or community-based healthcare setting. For example, standard estimates of occupational employment for Home Health Aides [3] includes Home Health Aides that work in institutionalized care settings, such as traditional nursing homes. Since occupations cross industries (work settings), it would be misleading to report the number from standard occupational estimates.

Similarly, estimates of industry (work setting) employment would be misleading in that the industry includes occupations that are not directly related to healthcare service. For example, the industry of Home Health Care Services [4] includes Management, Business and Financial occupations (chief executives, human resource managers, accountants, financial clerks, receptionists and information clerks, etc.), which provide no direct health service to individuals. Using either industry or occupational estimates alone would most likely lead to inflated estimates.

Methods: To overcome these data issues and provide an approximate estimate of workers providing direct healthcare services in the home- or community-based setting, required a three step process. The first step in our estimation process was to identify industries (work settings) that have a central focus of providing healthcare services in a home- or community-based setting. Using the North American Industry Classification System industry definitions, the team identified three critical industries: Home

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[1] Occupational employment data is capture through the Federal/State Occupational Employment Statistics Cooperative program, under the governance of the Bureau of Labor Statistics. See http://www.bls.gov/oes/.
[2] Industry employment data is captured through the Federal/State Cooperative Quarterly Census of Employment and Wages program, under the governance of the Bureau of Labor Statistics. See http://www.bls.gov/cew/
[3] Definitions and classification of occupations are provided by the Standard Occupational Classification (SOC) system. See http://www.bls.gov/SOC/.
[4] Definitions and classification of industries are provided by the North American Industry Classification System (NAICS). See http://www.bls.gov/bls/naics.htm.

Estimation of Employment of Direct Service Providers, Home-and Community-Based Settings, For the Governor's Office of Health Transformation
June 7, 2012

Health Care Services, Services for the Elderly and Persons with Disabilities, and Residential Mental Retardation Facilities (see appendix A for full definitions). These industries are primarily engaged in providing direct services in a home- or community-based setting.

The second step in the estimation process was to identify the occupations common within these industries that are responsible for providing the direct care or service – the Home Health Aides as opposed to Accountants within the industries. This was done by using industry occupational staffing patterns derived from Occupational Employment Statistics (OES), a Federal/State cooperative statistical program under the governance of the U.S. Bureau of Labor Statistics.

The third step was then to apply the industry occupational staffing pattern to industry employment estimates of the selected direct home- or community-based service industries. Industry employment estimates are provided through the Quarterly Census of Employment and Wages (QCEW), a Federal/State cooperative statistical program under the governance of the U.S. Bureau of Labor Statistics. Specifically we used 2010 (the latest available) U. S. industry occupational staffing patterns for its sample size, coverage and detail. These staffing patterns were applied to Ohio preliminary 2011(the most current available) QCEW industry employment estimates. The result is an approximate estimate of the number of workers directly engaged in home- or community-based healthcare services in Ohio, excluding the self-employed.

The advantage of this approach is that the analysis is based on long standing national data series, with standardized methodology, established statistical practices and the capability of comparisons across time.

At the same time we labeled the results as approximate estimates because of several inherent complications in the data:

- Industries are classified based on their primary activity and industries with secondary activities within the area of direct home- or community-based healthcare services are excluded from this analysis. An example is the exclusion of hospitals, where some may have a subset of their operation that engages in home- or community-based healthcare services.
- As can be seen in the chart below, confidentiality issues, sample size and data quality issues limit the disclosure of data for some occupations of interest.
- This is a conservative estimate in that it does not include those that are employed through the Employment Services industry, particularly Temporary Help Services. Although industry occupational staffing patterns exist for the Employment Services industry as a whole, their job placement activity across other industries is unknown. For instance, they could be placed in institutionalized care settings, such as traditional nursing homes. No doubt some are placed within home-and community-based settings. If all were placed within home-and community-based settings, it would add approximately 27,000 to our estimate.
- The nature and complexity of the industry and occupational classification system and the industry occupational staffing pattern matrix, require research analysts and the Prior Criminal

Estimation of Employment of Direct Service Providers, Home-and Community-Based Settings, For the Governor's Office of Health Transformation
June 7, 2012

Convictions Work Team to make judgments of where to draw lines to categories and separate data in meaningful ways that addressed the underlying research question. There was no direct and precise measurement available or established to address the question before the team.

The objective of the Prior Criminal Convictions Work Team is to provide information that assists in the implementation of the Mid-Biennium Review – Amended Substitute House Bill 4897. The results below are presented with that intent. These data can be updated on an annual basis. However, overtime the application of the law may create administrative records that provide the necessary counts and with more precision to the purposes of the law.

Results: The analysis described above produced an approximate estimate of 93,910 Ohio workers for 2011 engaged in direct home- or community-based healthcare services. These are estimates of the number workers employed by business establishments, which excludes the self-employed. The chart below provides details by the selected industries and occupations within those industries. The areas highlighted in blue represent the occupations included in the estimate.

Direct Service Providers for 3 Healthcare Industries*

Occupations with fewer than 50 jobs, confidential data, or poor quality data are not displayed

Selected Occupations Only

Occupation		Ohio			
			NAICS**		
SOC	Title	6216	62321	62412	Total
00-0000	Total, All Occupations	57,200	28,200	38,500	123,900
21-0000	Community and Social Service Occupations	1,540	4,110	3,660	9,310
21-1022	Healthcare Social Workers	860	110	460	1,430
21-1029	Social Workers, All Other	60	60	150	270
29-0000	Healthcare Practitioners and Technical Occupations	14,080	1,240	1,230	16,550
29-1111	Registered Nurses	7,840	480	580	8,900
29-1122	Occupational Therapists	400	30	120	550
29-1123	Physical Therapists	1,090	30	40	1,160
29-1125	Recreational Therapists		30	40	70
29-1126	Respiratory Therapists	60	0		60
29-2061	Licensed Practical and Licensed Vocational Nurses	3,720	540	270	4,530
31-0000	Healthcare Support Occupations	21,460	15,520	8,930	45,910
31-1011	Home Health Aides	18,310	12,450	7,970	38,730
31-1012	Nursing Aides, Orderlies, and Attendants	2,570	1,920	770	5,260
31-2011	Occupational Therapy Assistants	60	30	0	90

3

Estimation of Employment of Direct Service Providers, Home-and Community-Based Settings, For the Governor's Office of Health Transformation
June 7, 2012

31-2012	Occupational Therapy Aides		0	40	40
31-2021	Physical Therapist Assistants	290	0	0	290
31-2022	Physical Therapist Aides	0	0	0	0
31-9011	Massage Therapists	0			0
31-9092	Medical Assistants	60	0	0	60
31-9799	Healthcare Support Workers, All Other	60	280	40	380
35-0000	Food Preparation and Serving Related Occupations	60	310	580	950
35-3041	Food Servers, Nonrestaurant	0	30	40	70
39-0000	Personal Care and Service Occupations	12,020	3,520	17,740	33,280
39-9021	Personal Care Aides	11,840	1,750	16,400	29,990
39-9032	Recreation Workers	60	200	540	800
39-9041	Residential Advisors		760	150	910
39-9099	Personal Care and Service Workers, All Other	0	280	40	320
	Total selected occupations (highlighted in blue)	93,910			

*Based on United States Staffing Patterns for 2010 applied to preliminary 2011 Ohio Industry Employment, Quarterly Census of Employment and Wages.

**NAICS 6216 = Home Health Care Services
NAICS 62321 = Residential Mental Retardation Facilities
NAICS 62412 = Services for the Elderly and Persons with Disabilities

Prepared by the Ohio Department of Job and Family Services
Office of Workforce Development, Workforce Analytics, 2012

4

Estimation of Employment of Direct Service Providers, Home-and Community-Based Settings, For the Governor's Office of Health Transformation
June 7, 2012

Appendix A - NAICS definitions

These definitions are from the 2007 NAICS codes (http://www.census.gov/eos/www/naics/).

6216 Home Health Care Services

This industry comprises establishments primarily engaged in providing skilled nursing services in the home, along with a range of the following: personal care services; homemaker and companion services; physical therapy; medical social services; medications; medical equipment and supplies; counseling; 24-hour home care; occupation and vocational therapy; dietary and nutritional services; speech therapy; audiology; and high-tech care, such as intravenous therapy.

62321 Residential Mental Retardation Facilities

This industry comprises establishments (e.g., group homes, hospitals, intermediate care facilities) primarily engaged in providing residential care services for persons diagnosed with mental retardation. These facilities may provide some health care, though the focus is room, board, protective supervision, and counseling.

624120 Services for the Elderly and Persons with Disabilities

This industry comprises establishments primarily engaged in providing nonresidential social assistance services to improve the quality of life for the elderly, persons diagnosed with mental retardation, or persons with disabilities. These establishments provide for the welfare of these individuals in such areas as day care, nonmedical home care or homemaker services, social activities, group support, and companionship.