



# Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Joseph Baker**, Director

## Business Impact Analysis

**Agency, Board, or Commission Name:** OHIO DEPT. OF AGING

**Rule Contact Name and Contact Information:** Tom Simmons [rules@age.ohio.gov](mailto:rules@age.ohio.gov)

**Regulation/Package Title (a general description of the rules' substantive content):**

### BACKGROUND CHECKS FOR PAID DIRECT-CARE POSITIONS

Chapter 173-9 of the Administrative Code implements the requirements for rules under R.C. §§ [173.38](#) and [173.381](#).

**Rule Number(s):** 173-9-01, 173-9-02, 173-9-03, 173-9-03.1, 173-9-04, 173-9-04.1, 173-9-05, 173-3-06, 173-9-07, 173-9-07.1, 173-9-08, 173-9-09, 173-9-10

**Date of Submission for CSI Review:** June 29, 2023

**Public Comment Period End Date:** July 13, 2023 at 11:59PM.

#### Rule Type/Number of Rules:

☐ New/ 0 rules

☐ No Change/ 0 rules (FYR? ☐)

☒ Amended/ 8<sup>1</sup> rules (FYR? ☒)

☒ Rescinded/ 5 rules (FYR? ☒)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

#### Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

**Which adverse impact(s) to businesses has the agency determined the rule(s) create?**

<sup>1</sup> ODA proposes to replace 6 of these rules with proposed new rules.

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**The rule(s):**

- ☐ a. Require a license, permit, or any other prior authorization to engage in or operate a line of business.
- ☐ b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- ☒ c. Requires specific expenditures or the report of information as a condition of compliance.
- ☐ d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

**Regulatory Intent**

**2. Please briefly describe the draft regulation in plain language.**

*Please include the key provisions of the regulation as well as any proposed amendments.*

The rules in Chapter 173-9 of the Administrative Code establish requirements for background checks (database reviews and criminal records checks) on applicants for, and employees in, paid direct-care positions providing services to consumers enrolled in ODA-administered programs other than the Assisted Living Program, unless the provider is subject to the background check requirements for home health licensure under R.C. §[3740.11](#).

Throughout this chapter, ODA proposes to reduce the use of unnecessary regulatory restrictions (e.g., *shall*) in these rules to comply with R.C. §§ [106.03](#) and [121.951](#).<sup>2</sup> This proposal includes some substantive changes noted below and numerous non-substantive changes.

ODA's proposals to the rules of this chapter will result in amending approximately more than 50% of every rule other than rules 173-9-01 and 173-9-06 of the Administrative and the rules that ODA proposes to rescind. Therefore, ODA proposes to rescind these rules and to adopt new rules in their places to comply with the 50% guideline in §4.3.1 of LSC's [Rule Drafting Manual](#).

Rule 173-9-01 of the Administrative Code introduces Chapter 173-9 of the Administrative Code and defines terms used in that chapter, including "subcontractor," which R.C. §[173.38](#) requires ODA to define in rule. ODA proposes to amend this rule to achieve the following:

- Remove "goods or" as those words occur before "services" throughout the rule.
- Indicate that "consumer" includes individuals in the PASSPORT and Assisted Living Programs and participants in PACE. delete the definition of "individual," and delete the use of "individual" in this and other rules of this chapter. This corresponds to the use of "consumer" in R.C. §§ 173.38 and 173.381.
- Remove the reference to rule 173-9-03.1 of the Administrative Code, because ODA is proposing to rescind that rule.
- Refer to Chapter 306. of the Revised Code in the definition of "direct-care position."
- Define "PACE organization."

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<sup>2</sup> Senate Bill 9 (134<sup>th</sup> G.A.).

- Delete the definition of “waiver agency” because House Bill 166 (133<sup>rd</sup> G.A.) removed the exemption for such an agency from R.C. §173.38.

Rule 173-9-02 of the Administrative Code explains the applicability of this Chapter. The exemptions in R.C. §§ [173.38](#) and [173.381](#) are in different divisions of each section. This rule presents all exemptions in one place. ODA proposes to rescind this rule and to replace it with a proposed new rule to achieve the following:

- List only the positions to which this chapter does not apply. R.C. §§ 173.38 and 173.381 establish these exemptions.
- Refer to [Chapter 306. of the Revised Code](#) in the listing of the exemption on a position whose sole duties are transporting consumers while working for a county transit system, regional transit authority, or regional transit commission.
- No longer indicate that a position that involves providing legal services is exempt since neither R.C. §173.38 or §173.381 exempts such a position.
- Provide a helpful cross-reference to the chapter of background check requirements that apply to a position in a residential care facility.
- Provide a helpful cross-reference to the chapter of background check requirements that apply to a position providing home health services or another service for which the provider needs a home health license.
- Refer to appendix A to rule 173-9-04 of the Administrative Code for more information on occasions when a background check is required on an applicant for a direct-care position, but not an employee for the same position.
- Delete the paragraph on implied factors.
- Delete the paragraph on chief administrators.

Rule 173-9-03 of the Administrative Code implements (1) the requirement under R.C. [§173.38](#) for a responsible party to conduct a database review on an applicant for a paid direct-care position to see if the applicant's status in any database prohibits the provider from hiring the applicant in that direct-care position, (2) the state's option under R.C. §173.38(K)(1)(a) to require a responsible party to conduct a database review on an employee in a paid direct-care position to see if the employee's status in any database prohibits the provider from retaining the employee in that direct-care position, (3) the databases to review, (4) the times at which database reviews are required, (5) the procedures for a database review, and (6) the meaning of a disqualifying status. ODA proposes to rescind this rule and replace it with a proposed new rule to achieve the following:

- Combine rule 173-9-03.1 of the Administrative Code into this rule, which will make the proposed new rule apply to applicants, employees, and self-employed providers under R.C. [§173.381](#).
- Give agency providers flexibility to conduct database reviews on the same day as a criminal records check rather than before a criminal records check, which means the responsible party could review the databases after conducting the criminal records check. The current rules require all responsible parties to conduct database reviews before conducting criminal records checks to prevent spending money on a criminal records check if a database review indicates that an applicant, employee, or self-employed provider is disqualified. This flexibility may result in increased costs to agency providers. The proposed new rule will continue to require responsible parties that are ODA, an AAA, a PAA, or a consumer to conduct database reviews before conducting a criminal records check to ensure that taxpayer funds are not unnecessarily spent. For more information, please review ODA's response to question #10.

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- Add a helpful statement that a responsible party may use the automated registry check system (ARCS) to review all databases at the same time and on a continual basis.
- Update references to databases.
- Include a helpful reference to R.C. §173.38(G) for the impact of a referral by an employment service upon the requirements for database reviews. This will prevent ODA from duplicating standards established elsewhere for this less-common situation.

Rule 173-9-03.1 of the Administrative Code requires responsible parties to conduct a database review on a self-employed<sup>3</sup> provider who wants to either (1) become/remain certified under R.C. §173.391 or (2) win/retain an AAA-provider agreement under R.C. §173.392. ODA proposes to rescind this rule and to combine it with rule 173-9-03 of the Administrative Code.

Rule 173-9-04 of the Administrative Code implements (1) the requirement for a responsible party to conduct a criminal records check on each applicant for a paid direct-care position, (2) the state's option to require a responsible party to conduct a criminal records check on an employee in a paid direct-care position, (3) exemptions to classes of employees<sup>4</sup> from the requirement to undergo a criminal records check, (4) the deadlines for conducting a criminal records check, and (5) standards for special situations. ODA proposes to rescind this rule and replace it with a proposed new rule to achieve the following:

- Combine rule 173-9-04.1 of the Administrative Code into this rule, which will make the proposed new rule apply to applicants, employees, and self-employed providers under R.C. §173.381.
- Move the standards for who to check to Appendix A to this rule.
- Include a helpful reference to R.C. §§ 173.38 and 173.381 and Chapter 109:5-1 of the Administrative Code for the procedures for conducting criminal records checks rather than repeating those procedures in this rule. Since the person who conducts criminal records checks for a responsible party (e.g., a human resources professional) is likely to become familiar with background check procedures over time, this will allow the rule to not duplicate requirements established elsewhere.
- Move the deadlines for criminal records checks to Appendix B to this rule.
- Include helpful references for standards that apply to the following special situations: (1) reverification, (2) FBI records, (3) referrals from an employment service, and (4) participant-directed providers. This will prevent ODA from duplicating standards established elsewhere for less-common situations.

Rule 173-9-04.1 of the Administrative Code requires responsible parties to conduct a criminal records check on a self-employed provider who wants to either (1) become/remain certified under R.C. §173.391 or (2) win/retain an AAA-provider agreement under R.C. §173.392. ODA proposes to rescind this rule and to combine it with rule 173-9-04 of the Administrative Code.

Rule 173-9-05 of the Administrative Code establishes the standards for conditional hiring. ODA proposes to rescind this rule and replace it with a proposed new rule to achieve the following:

- Reference the standards for conditional hiring in R.C. §173.38 rather than duplicating them in this rule.
- Indicate the limited applicability of this rule. It doesn't (1) establish a requirement for an employee who holds a paid-direct-care position to enter a conditional status when undergoing a criminal records check as an employee, (2) authorize ODA to offer a conditional status to a self-employed applicant for ODA certification as a non-agency

<sup>3</sup> As used in this document and in Chapter 173-9 of the Administrative Code, "self-employed" means "the state of working for one's self with no employees."

<sup>4</sup> R.C. §173.38 does not authorize ODA to exempt classes of *applicants* from the requirement to undergo a criminal records check.

provider, or (3) authorize an AAA to offer a conditional status to a self-employed bidder on an AAA-provider agreement.

Rule 173-9-06 of the Administrative Code implements the list of sections of the Ohio Revised Code listed under R.C. [§109.572\(A\)\(3\)](#) into the background check rules and lists the disqualifying offenses listed in each section. This has the effect of creating a list of disqualifying offenses for a paid-direct care position in an ODA-administered program. ODA proposes to amend this rule to achieve the following:

- Update the description of disqualifying offenses to make it easier for responsible parties to search for disqualifying offenses in this rule that they may find on a criminal records report.
- Indicate that being found eligible for intervention in lieu of conviction to a disqualifying offense is a disqualifying status. (*cf.*, R.C. [§109.572](#))
- Add the offense of unlawful performance of a drug-induced abortion under R.C. §2919.124 to comply with [Senate Bill 260 \(133<sup>rd</sup> G.A.\)](#), which added that offense under R.C. [§109.572\(A\)\(3\)](#).
- Remove the offense of illegal use or possession of marijuana drug paraphernalia under R.C. §2925.141 to comply with [Senate Bill 288 \(134<sup>th</sup> G.A.\)](#), which removed that offense from under R.C. [§109.572\(A\)\(3\)](#).

Rule 173-9-07 of the Administrative Code implements the requirement under R.C. §§ 173.38 and 173.381 to establish occasions when a responsible party (1) may hire an applicant or self-employed subcontractor, or retain an employee or self-employed subcontractor; or is prohibited from refusing to certify a self-employed provider under R.C. [§173.391](#) or enter into an AAA-provider agreement under R.C. [§173.392](#) solely because the self-employed provider has a disqualifying offense on the provider's criminal record. Interviews with human resources professionals working for responsible parties indicate that this may be the most useful rule in this chapter. This is supported by Google Analytics, which revealed that, for a 99-week period, the public accessed this rule on codes.ohio.gov more often (at 21.2 times per week), and for more time (at 3 minutes and 32 seconds per view), than any other rule in Chapter 173-9 of the Administrative Code (For more information, please review ODA's responses to questions #10 and #11). ODA proposes to rescind this rule and replace it with a proposed new rule to achieve the following:

- Combine rule 173-9-07.1 of the Administrative Code into this rule, which will make the proposed new rule apply to applicants, employees, and self-employed providers under R.C. R.C. §173.381.
- Change the title to "Background checks for paid direct-care positions: occasions when a disqualifying offense does not disqualify."
- List each type of responsible party in its own introductory paragraph.

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- Simplify the rule—to the degree possible—by consistently using words that correspond with “disqualifying offense” rather than also using “exclusionary” and “violation.”
- Update the description of disqualifying offenses to make it easier for responsible parties to search for disqualifying offenses in this rule that they may find on a criminal records report.
- Add being found eligible for intervention in lieu of conviction to a disqualifying offense into paragraphs (A)(1), (A)(2), (A)(3), (A)(4), and (A)(5) of this rule. (*cf.*, R.C. [§109.572](#))
- Add the offense of unlawful performance of a drug-induced abortion under R.C. §2919.124 to comply with [Senate Bill 260 \(133<sup>rd</sup> G.A.\)](#), which added that offense under R.C. [§109.572](#)(A)(3). ODA, ODODD, ODH, ODM, and ODMHAS each agreed to assign this disqualifying offense to Tier IV due to its similarity to the disqualifying offense under R.C. §2919.123. Therefore, ODA proposes to add this disqualifying offense to Tier IV.
- Remove the offense of illegal use or possession of marijuana drug paraphernalia under R.C. §2925.141 to comply with [Senate Bill 288 \(134<sup>th</sup> G.A.\)](#), which removed that offense from under R.C. [§109.572](#)(A)(3).

Rule 173-9-07.1 of the Administrative Code establishes four occasions when a responsible party is prohibited from refusing to certify a self-employed provider under R.C. [§173.391](#) or enter into an AAA-provider agreement under R.C. [§173.392](#) solely because the self-employed provider has a disqualifying offense on the provider’s criminal record. ODA proposes to rescind this rule and to combine it with rule 173-9-07 of the Administrative Code.

Rule 173-9-08 of the Administrative Code establishes records requirements. ODA proposes to rescind this rule and replace it with a proposed new rule to achieve the following:

- Provide a helpful reference to the confidentiality requirements in R.C. §§ 173.38 and 173.381 rather than duplicating those requirements in this rule.
- Provide helpful references to records retention requirements in federal rules and Chapters 173-3 and 173-39 of the Administrative Code rather than duplicate those requirements in this rule.
- Replace the requirement for a responsible party to maintain a roster of applicants and employees to a requirement to maintain this roster only for applicants and employees who require obtaining criminal records from the FBI through BCII.

Rule 173-9-09 of the Administrative Code duplicate the immunity provisions in R.C. §§ 173.38 and 173.381. Google Analytics shows that this is the least-viewed rule in the chapter. (For more information, see ODA’s response to question #11). ODA proposes to rescind this rule.

Rule 173-9-10 of the Administrative Code provides cross-references to other statutes and rules that establish disciplinary actions for non-compliance. Google Analytics shows that this is the second-least-viewed rule in the chapter (For more information, please review ODA’s response to question #11). ODA proposes to rescind this rule.

Lastly, ODA also proposes to make additional non-substantive changes to the rules in this package.

### **3. Please list the Ohio statutes that authorize the agency, board or commission to adopt the rule(s) and the statutes that amplify that authority.**

R.C. §§ [121.07](#), [173.01](#), [173.02](#), [173.38](#), [173.381](#), [173.39](#), [173.391](#), [173.392](#), [173.422](#), [173.50](#), [173.52](#), and [173.522](#).

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**4. 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.*

[42 U.S.C. 3025](#) says ODA is “primarily responsible” for Older Americans Act policy development in Ohio and [45 C.F.R. 1321.11](#) requires ODA to “develop policies governing all aspects of [Older Americans Act] programs.”

[42 C.F.R. 460.68](#) prohibits PACE organizations from employing or contracting with individuals who have been excluded from the Medicare or Medicaid programs. [42 C.F.R. 460.71](#) requires PACE organizations to comply with state requirements on employing or contracting with individuals with criminal convictions as direct-care staff.

In order for the Centers for Medicare and Medicaid Services (CMS) to approve Ohio’s application for a Medicaid waiver authorizing the state to launch and maintain the PASSPORT Program, [42 C.F.R. 441.352](#) requires ODA to assure CMS in the waiver application that ODA established adequate requirements for providers (*i.e.*, adopted these rules) and that ODA monitors the providers to assure they comply with those requirements (*i.e.*, comply with these rules).

Additionally, the U.S. Dept. of Health and Human Services, Centers for Medicare and Medicaid Services, awarded a federal grant<sup>5</sup> to the state bringing Ohio into the National Background Check Program for Patient Protection, which was authorized by the Affordable Care Act. The program required ODA and other state agencies to require database reviews, and required the State to create and operate the automated records check system (ARCS) which is built upon the database-review requirements in 173-9-03, 173-9-03.1, and similar rules for other state agencies’ programs.<sup>6</sup>

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

The rules exist to implement the state laws ODA listed in its response to #3 and the federal law and federal regulations ODA listed in its response to #4.

**6. 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)?**

These rules exist to (1) rules exist to implement the state laws ODA listed in its response to #3 and the federal law and federal regulations ODA listed in its response to #4, and (2) ensure necessary safeguards are in place to protect the health and safety of consumers receiving services through ODA-administered programs.

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

To ensure compliance fostering the health and safety of consumers receiving services paid with Older Americans Act funds and compliance with monitoring (*i.e.*, auditing) requirements under 45 C.F.R. Part 75, Subpart F: (1) ODA regularly monitors AAAs for compliance with these rules and (2) AAAs regularly monitor providers for their compliance with AAA-provider agreements, the rules are judged as being successful when (1) ODA funds few violations in AAA-provider agreements and (2) AAAs find few violations against AAA-provider agreements.

**8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

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<sup>5</sup>U.S. DEPT. OF HEALTH & HUMAN SERVICES: CENTERS FOR MEDICARE AND MEDICAID SERVICES, Nationwide Program for National and State Background Checks for Direct Patient Access Employees of Long-Term Care Facilities and Providers ([CFDA 93.506](#)).

<sup>6</sup> Rules [173-14-14](#), [3701-60-05](#), [5122-30-31](#), [5123-2-02](#), [5160-45-07](#), and [5160-45-08](#) of the Administrative Code.

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No.

### **Development of the Regulation**

#### **9. 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's guide [Participating in ODA's Rule Development](#) and the [main rules webpage](#) on ODA's website encourage stakeholders and the general public to give input on improving ODA's rules and provide contact information for doing so. From each rule's effective date to the date of this BIA, ODA received one email through this route from the executive director of Senior Resource Connection on March 25, 2023 upon his retirement.

On July 12, 2021, ODA asked the following organizations for early input on proposals to remove/revise requirements for outdated modes of communication or in-person interaction from rules 173-9-06, 173-9-07, 173-9-07.1, and 173-9-08 of the Administrative Code:

- Academy of Senior Health Sciences, Inc. (a provider association).
- Catholic Social Services of the Miami Valley (a PASSPORT administrative agency (PAA)).
- LeadingAge Ohio (a provider association).
- Ohio Association of Area Agencies on Aging (an association of area agencies on aging (AAAs), each of which also serves as a PAA).
- Ohio Assisted Living Association (a provider association).
- Ohio Association of Medical Equipment Suppliers (a provider association).
- Ohio Association of Senior Centers (a provider association).
- Ohio Health Care Association (a provider association).
- Ohio Council for Home Care and Hospice (a provider association).
- Ohio Jewish Communities (a provider association).
- State Long-Term Care Ombudsman (an advocate for consumers).

On September 28, 2021, ODA asked the following organizations for early input on improving any rule in Chapter 173-9 of the Administrative Code:

- Academy of Senior Health Sciences, Inc. (a provider association).
- Catholic Social Services of the Miami Valley (a PAA).
- LeadingAge Ohio (a provider association).
- Ohio Association of Area Agencies on Aging (an association of AAAs, each of which is also a PAA).
- Ohio Assisted Living Association (a provider association).
- Ohio Association of Medical Equipment Suppliers (a provider association).
- Ohio Association of Senior Centers (a provider association).
- Ohio Health Care Association (a provider association). Ohio Council for Home Care and Hospice (a provider association).
- Ohio Jewish Communities (a provider association).
- State Long-Term Care Ombudsman (an advocate for consumers).

On May 17, 2022, ODA emailed the following stakeholders to explain how artificial intelligence has added a new dimension to interpreting rules, define *regulatory restrictions*, declare the need to reduce regulatory restrictions, explain how ODA can reduce regulatory restrictions by eliminating duplicate uses of regulatory restrictions, provide stakeholders with an opportunity

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to make recommendations on ODA's plan, and provide stakeholders with an opportunity to make recommendations on eliminating any regulatory restriction in any chapter of ODA's rules:

- Catholic Social Services of the Miami Valley.
- LeadingAge Ohio.
- Ohio Assisted Living Association (OALA).
- Ohio Academy of Senior Health Sciences, Inc.
- Ohio Adult Day Healthcare Association (OADHA).
- Ohio Association of Area Agencies on Aging (OAA).
- Ohio Association of Medical Equipment Suppliers (OAMES).
- Ohio Association of Senior Centers (OASC).
- Ohio Council for Home Care and Hospice (OCHCH).
- Ohio Health Care Association (OHCA).
- Ohio Jewish Communities.
- State Long-Term Care Ombudsman.

From January 27, 2023 to February 6, 2023 ODA interviewed three human resources professionals who conduct database reviews and criminal records checks for provider agencies to see when and how often they viewed the rules in this chapter. ODA interviewed a rural provider of 30 employees in southeastern (Appalachian) Ohio, a suburban provider of 42 employees in northwest Ohio, and an urban provider of 189 employees in southwest Ohio.

In March 2023, ODA and ODM conducted a public-comment period for the renewal application with CMS for a Medicaid waiver to authorize the PASSPORT Program.

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

The March 25, 2023 email from Senior Resource Connection recommended either (1) eliminating database reviews and relying only upon criminal records checks or (2) eliminating the state nurse aide registry from the list of databases since it is a database of aides trained for facility-based work and not home and community based services. ODA replied as follows:

To simplify the process of reviewing databases, we recommend enrolling in the [Automated Registry Check System](#) (ARCS). Additionally, it makes sense to continue to require responsible parties to review all 7 databases for the following reasons:

- If an applicant was listed on the SAM or OIG databases, the applicant would be ineligible to be a provider even if our rules did not require reviewing those databases. Likewise, if an applicant was listed in the Medicaid database as disqualified, the applicant would be ineligible to participate in any Medicaid-funded programs even if our rules did not require reviewing that database.
- If an employee of a skilled nursing facility was listed as an abuser in either the abuser registry or the nurse aide registry, we want to protect consumers from having these aides provide services in their homes. Likewise, if a person is a registered sex offender or currently on parole, we want to protect consumers from providing services in their homes.

In response to its July 12, 2021 emails, ODA received 2 comments from 2 provider associations.

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#	Rule	Recommendation	ODA's Response
01	173-9-04	A provider association commented that the lengthy process of obtaining a background checks is a burden to providers, especially during a workforce shortage. The barrier is the time it takes to actually receive the results of the background check from the Bureau of Criminal Identification and Investigation (BCII) by mail, which is approximately four weeks. The provider association also raised the issue with BCII and hopes for a solution to obtain criminal records electronically so that our agencies can continue with swift hiring processes.	BCII offers rapback as an electronic alternative to waiting for periodic background checks on <i>existing employees</i> . We are unaware if BCII plans to offer an electronic alternative for <i>applicants</i> under final consideration for hiring. BCII has authority over their reports. We hope BCII responds favorably to the concerns you have raised.
02	173-9-08	A provider association said the reference in this rule to both electronic or paper storage of background checks is sufficient.	Thank you!

In response to its September 28, 2021 emails, ODA received 8 comments from 2 provider associations, 1 comment from a provider which commented independently from its provider association, and 21 comments from 5 AAAs/PAAAs.

#	Rule	Recommendation/Question	ODA's Response
01	173-9-01	A provider association recommended distinguishing between office staff that do and do not have in-person contact with consumers by (1) revising the definition of "direct care position" to mean only a position involving in-person contact with consumers and (2) using a different term for office staff who do not have in-person contact with consumers.	The definition originates in section 173.38 of the Revised Code. ODA cannot revise the definition in the rule so that it conflicts with the definition in the Revised Code.
02	173-9-01	A provider association asked why ODA defines "individual."	Because some ODA programs use "individual" rather than "consumer," ODA proposes to modify the definition of "consumer" rather than use both "consumer" and "individual" throughout these rules.
03	173-9-01	A PAA commented that a provider of the choices home care attendant service is considered to be self-employed provider for the purpose of background checks and a self-employed provider is a type of provider for which PAA would be the responsible party that must conduct a background check.	R.C. §173.38 establishes the consumer/individual as the employer of record and the person who is the responsible party that must conduct a background check. Although the Revised Code does not give a PAA the right or responsibility to conduct a background check on a participant-directed provider, the PAA may assist the consumer/individual in complying with the consumer's/individual's responsibilities.
04	173-9-01	An AAA recommended defining ODA to be the responsible party for conducting background checks on participant-directed providers instead of consumers.	Please review ODA's response to the previous recommendation.
05	173-9-01	A provider recommended amending the rule to identify whether the responsible party for conducting background checks on subsidized employees through the Senior Community Service Employment Program under Title V of the Older Americans Act is either (1) the provider that hosts the job opportunity or (2) the Title V employment service that pays the employee and referred the employee to the provider.	Because ODA's background check rules apply to many ODA-administered programs, they contain general terminology that is applicable to the many program instead of program-specific terminology. The general terminology shows that the AAA, PAA, provider, subcontractor, or consumer receiving or hosting the job opportunity is responsible for conducting background checks unless the employment service complies with R.C. §173.38(G).
06	173-9-01 173-9-02 173-9-08	A provider association asked why "waiver agency" is defined in rule 173-9-01 and why the exemption for waiver agencies exists in rule 173-9-02.	House Bill 166 (133 <sup>rd</sup> G.A.) removed the "waiver agency" exemption from R.C. §173.38. ODA proposes to remove the term from rules 173-9-01, 173-9-02, and 173-9-08 of the Administrative Code.

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#	Rule	Recommendation/Question	ODA's Response
07	173-9-02 173-9-04	Two AAAs recommended removing the exemption on employees who deliver meals from undergoing subsequent background checks after the check conducted on applicants at the time of hiring.	At this time, ODA does not intend to require employees in paid direct-care positions that only deliver meals to undergo background checks because these employees do not provide an in-home service like personal care and because ODA has no record of any pattern of such employees abusing, neglecting, or exploiting consumers.
08	173-9-02 173-9-04	An AAA recommended only requiring personal emergency response system providers to request criminal records from the FBI for applicants and employees of its central monitoring station <sup>7</sup> if that central monitoring station is located outside of Ohio.	ODA used its authority under R.C. §173.38(K)(1)(b) to exempt personal emergency response system providers from the requirement to conduct subsequent criminal records checks on <i>employees</i> of a central monitoring station—regardless of its location. The provider is not required to obtain criminal records from BCII or the FBI for such <i>employees</i> .  By contrast, ODA cannot eliminate the requirement for a personal emergency response system provider to conduct a criminal records check on <i>applicants</i> of central monitoring stations—regardless of whether the stations are located in Ohio or another state. This is because (1) R.C. §§ 109.572 and 173.38 require using BCII for every applicant and (2) R.C. §173.38 does not permit ODA to exempt one or more classes of <i>applicants</i> from the requirement to conduct criminal records checks with BCII.
09	173-9-02	Because a Medicare-certified home health agency may also be an ODA-certified provider or do business with ODA through a provider agreement, a provider association recommended either removing the exemption for Medicare-certified home health agencies or clarifying when or how it applies.	Although we understand that a provider may have lines of business into multiple government programs and may be both ODA-certified and Medicare-certified, the exemption for home health agencies originates in R.C. §173.38.
10	173-9-03 173-9-03.1	A provider association recommended creating a single database that responsible parties could use to check all 7 databases at the same time.	In 2013, the State of Ohio launched the <a href="#">automated registry check system</a> (ARCS). Responsible parties may enroll employees into ARCS to check all 7 databases for the employee's information on a daily basis. Responsible parties must conduct the initial review in the 7 databases for applicants.
11	173-9-03 173-9-03.1	A provider association commented that the process necessary to prove that an applicant or employee is not listed in the Nurse Aide Registry is overly burdensome.	To simplify the process, we recommend enrolling in the <a href="#">Automated Records Check System</a> (ARCS) or save a .pdf of the page that shows the person is not found in the registry.

<sup>7</sup> A central monitoring station is the “call center” for a personal emergency response system. The triggering of a remote activation device worn by a consumer contacts a central monitoring station where staff communicate with the consumer, determine if the consumer needs emergency or non-emergency assistance, then contacts emergency services or a designated responder for non-emergencies.

#	Rule	Recommendation/Question	ODA's Response
12	173-9-03 173-9-03.1	An AAA said a disqualifying status is "rarely, if ever," found in the databases and questioned whether ODA needed to require responsible parties to check all 7 databases.	<p>To simplify the process, ODA recommends enrolling in the <a href="#">Automated Records Check System</a> (ARCS).</p> <p>Additionally, it makes sense to continue to require responsible parties to review all 7 databases for the following reasons:</p> <ul style="list-style-type: none"> <li>• If an applicant was listed on the SAM or OIG databases, the applicant would be ineligible to be a provider even if our rules did not require reviewing those databases. Likewise, if an applicant was listed in the Medicaid database as disqualified, the applicant would be ineligible to participate in any Medicaid-funded programs even if our rules did not require reviewing that database.</li> <li>• If a person was listed as an abuser in either the abuser registry or the nurse aide registry, we want to protect consumers from them. Likewise, if a person is a registered sex offender or currently on parole, we want to protect consumers from that person.</li> </ul>
13	173-9-03 173-9-03.1	A provider recommended not codifying the URLs since they regularly need updated and could be subject to misspelling.	We added the URLs to simplify complying with the rules. Without them, it may be difficult for a responsible party that does not use ARCS to find every database. However, we agree that they change over time. That is why we also added the following: "If a URL is listed in the table becomes obsolete, please consult with the government entity publishing the database for an updated URL."
14	173-9-03 173-9-03.1	An AAA recommended updating the URLs.	ODA plans to update the URLs.
15	173-9-03	An AAA recommended requiring the government entities that publish the databases to notify ODA before they change their URLs.	We do not have authority to require this of other government entities.
16	173-9-03 173-9-04	Two AAAs said the requirement to review databases <i>before</i> conducting the criminal records check is "overkill." The AAAs recommended simply requiring the responsible party to complete both the database reviews and criminal records check before hiring, certifying, subcontracting, or entering into an AAA-provider agreement. An AAA said that this would give responsible parties flexibility to conduct criminal records checks before reviewing databases, which would have cost implications, but responsible parties should be allowed to choose the more-expensive option if they want.	<p>ODA recommends that responsible parties enroll their employees in <a href="#">ARCS</a> and <a href="#">rapback</a> to reduce the cost and efforts involved in background checks.</p> <p>ODA also proposes to give agency providers flexibility to conduct database reviews on the same day as a criminal records check rather than before a criminal records check, which means the responsible party could review the databases after conducting the criminal records check. The current rules require all responsible parties to conduct database reviews before conducting criminal records checks to prevent spending money on a criminal records check if a database review indicates that an applicant, employee, or self-employed provider is disqualified. This flexibility may result in increased costs to agency providers. The proposed new rule will continue to require responsible parties that are ODA, an AAA, a PAA, or a consumer to conduct database reviews before conducting a criminal records check to ensure that taxpayer funds are not unnecessarily spent.</p>
17	173-9-03 173-9-04	An AAA recommended requiring responsible parties to enroll in ARCS and Rapback to simplify background checks—just as the Dept. of Developmental Disabilities requires for responsible parties in its programs.	ODA gives responsible parties flexibility to decide whether to enroll in ARCS and Rapback.

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#	Rule	Recommendation/Question	ODA's Response
18	173-9-03 173-9-04	Two AAAs recommended defining when an applicant is hired as (1) the day the hiring papers are signed, (2) the day the criminal records check is ordered, or (3) the first day the new hire provides services.	R.C. <a href="#">§173.38</a> requires a criminal records check on an applicants, which that section defines as <i>a person who is under final consideration for employment</i> . This means that the hiring date is not the date that the check is ordered because hiring occurs after a check is ordered.  R.C. §173.38 does not address the first day of services, so the hiring date would refer to the day the hiring papers are signed, which would occur after a check is ordered.
19	173-9-04	A provider association recommended defining "All direct-care positions not listed above" and the when to review the "start dates and deadlines" for the definition of "All direct-care positions not listed above."	The term <i>all direct-care positions not listed above</i> means all <i>direct-care positions</i> (as that term is defined in R.C. <a href="#">§173.38</a> ) that are not listed in the rows above the row containing that term.
20	173-9-04	One AAA recommended allowing responsible parties to accept a criminal records report addressed to another party if it is less than 12 months old.	R.C. <a href="#">§173.38(l)</a> specifies when and to whom the report of any criminal records check conducted pursuant to that section may be released. ODA does not have authority to alter or add to that list via administrative rule.
21	173-9-04	Three AAAs recommended listing the allowable fingerprint reason codes in the rule.	At this time, ODA does not propose to reference fingerprint reason codes in the rules because ODA does not control the codes and the codes are not established by any statute or rule.
22	173-9-04	One AAA recommended allowing a responsible party to determine that an applicant/employee is not disqualified if a background check was done under any fingerprint reason code and the report showed a clean record.	This would require legislation.
23	173-9-04	An AAA recommended prohibiting responsible parties from using fingerprint impression sheets because doing so leads to a much longer turnaround time with BCII.	Although we agree that using WebCheck saves time, ODA's rules have mentioned fingerprint impression sheets because R.C. §§ <a href="#">109.572</a> and <a href="#">173.38</a> allow responsible parties to use them. The proposed new rule will refer to R.C. §173.38 for procedures.
24	173-9-04	An AAA said the inability to review FBI reports presents a problem because providers are not always truthful.	R.C. <a href="#">§173.38(l)</a> specifies when and to whom the report of any criminal records check conducted pursuant to that section may be released. ODA does not have authority to alter or add to that list via administrative rule.
25	173-9-04	An AAA asked if providers could streamline the hiring process by hiring only employees referred to them from employment services that conducted the background checks before the referral.	Yes! R.C. <a href="#">§173.38(g)</a> relieves the responsible party of the need to conduct a criminal records check if the employment service provides the responsible party with a copy of the database review results and criminal records check and that review and check reveal that the applicant/employee is not disqualified or is disqualified, but able to be hired or retained under the conditions listed in rule 173-9-07 of the Administrative Code.
26	173-9-05	An AAA recommended extending the 60-day period for conditional hiring during federal public health emergencies.	R.C. <a href="#">§173.38</a> does not allow ODA to extend the 60-day period.
27	173-9-05	An AAA recommended allowing the 60-day maximum period for conditional hiring to begin on the first day the conditionally-hired applicant provides services rather than on the day the criminal records were requested from BCII.	R.C. <a href="#">§173.38</a> requires the 60-day period to begin with the request for the criminal records check.
28	173-9-06	The AAA recommended implementing the amendment to R.C. §109.572 that took effect in 2019.	ODA plans to implement changes made by H.B. 166 (133 <sup>rd</sup> G.A.).

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#	Rule	Recommendation/Question	ODA's Response
29	173-9-08	An AAA recommended removing requirements for responsible parties to maintain rosters of applicants and employees because they are "hardly ever" accurate, easy to falsify, and provide very little useful information. Receipts from BCII are sufficient to show that a provider has requested criminal records. There is no need to maintain a roster.	ODA proposes to replace the requirement for a responsible party to maintain a roster of applicants and employees to a requirement to maintain this roster only for applicants and employees who require obtaining criminal records from the FBI through BCII. This should significantly reduce the number of applicants and employees that a responsible party must log into a roster.

In response to its May 17, 2022 emails, ODA received 0 recommendations from stakeholders on this chapter of rules.

From ODA's interviews of human resources professionals who conduct database reviews and criminal records checks on January 27, 2023 to February 6, 2023, ODA learned the following:

- How often each provider hires applicants varied, as follows:
  - The provider with a staff of 30 hires applicants 2 times per month.
  - The provider with a staff of 42 hires applicants 1 to 3 times per month.
  - The provider with a staff of 189 hires applicants 4 to 8 times per month.
- All three providers said that they did not need ODA's rules to explain how to conduct background checks. They did not review ODA's rules—in particular, rule 173-9-04 of the Administrative Code—to learn how to conduct background checks because they are familiar with the process from experience. As noted in the previous bullet, the providers hire multiple applicants every month. This means that they conduct multiple background checks every month on these applicants plus their current employees.
- How often each provider hires applicants with disqualifying offenses on their criminal records varied, as follows:
  - The SE Ohio provider never hires applicants with disqualifying offenses on their criminal record, but once retained a valuable employee who was convicted of a disqualifying offense.
  - The NW Ohio generally does not hire applicants with disqualifying offenses on their criminal record, but once considered such an applicant.
  - The SW Ohio provider indicated that most applicants now have disqualifying offenses on their criminal record, and they are willing to consider these applicants.
- All three providers said that rule 173-9-07 of the Administrative Code is the rule that they need to review when considering an applicant with a disqualifying offense.

During the March 2023 public-comment period for the renewal application with CMS for a Medicaid waiver to authorize the PASSPORT Program, ODA received a comment received from Addus Home Care which claimed that Ohio was a more-difficult state in which to do business *than many other states* because it required checking 7 databases. In response, ODA explained that Ohio laws require checking for disqualifying a disqualifying status in databases as a measure to protect consumers from abuse, neglect, and exploitation. A person would be disqualified from a direct-care position to provide services to consumers through a federally-funded program, which is almost every ODA-administered program, by their disqualifying listing in SAM or OIG databases even if ODA's rules did not mention the database. This would also be the case in all 50 states. Likewise, a person would be disqualified from a direct-care position to provide services to consumers through a Medicaid-funded program (e.g., the PASSPORT Program) by their listing in the Medicaid exclusion/suspension list even if ODA's rules did not mention that database. In other cases, these rules determine that a person listed as a registered sex offender, registered abuser, *etc.* are disqualified from a direct-care position serving consumers through ODA-administered programs even if being listed in those databases would not otherwise disqualify the person apart from ODA's rules. Ohio also offers providers use of an automated records check system (ARCS) which checks all databases at once.

## 11. 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?

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ODA obtained Google analytics on the use of the rules in Chapter 173-9 of the Administrative Code, as presented on codes.ohio.gov between April 1, 2021 and February 24, 2023 to determine each rule's perceived usefulness by how often the public viewed it. The analytics showed that rule 173-9-09 of the Administrative Code may be the least useful rule. The public viewed that rule an average of 1.66 times per week for an average of 29 seconds per view. ODA proposes to rescind that rule. The analytics showed that rule 173-9-07 of the Administrative Code may be the most useful rule. The public viewed that rule an average of 21.2 times per week for an average of 3 minutes and 32 seconds per view. ODA proposes to retain this rule.

The periods of disqualification in rule 173-9-07 of the Administrative Code were originally established in the version of the rule that took effect on January 1, 2013. The offices of the governor and attorney general, the Office of Health Transformation, and the Ohio Departments of Aging, Developmental Disabilities, Health, Medicaid, and Mental Health and Addiction Services jointly organized the disqualifying offenses into the five periods of disqualification (i.e., tiers). This work was influenced by the following research:

- Blumstein, A. and Nakamura, K., *Redemption in the Presence of Widespread Criminal Background Checks*, CRIMINOLOGY, Vol., 47 (May, 2009), 327-359.
- NATIONAL INSTITUTE OF JUSTICE JOURNAL, <https://nij.ojp.gov/topics/articles/redemption-era-widespread-criminal-background-checks>.
- Presentation to the Ex-Offender Re-Entry Coalition, Columbus, OH (September 16, 2010).
- Kurlychek, M., Brame, R., and Bushway, S., *Scarlet Letters and Recidivism: Does an Old Crime Predict Future Offending?*, CRIMINOLOGY & PUBLIC POLICY 5:3 (Sept. 13, 2006), 483-504.
- Kurlychek, M., Brame, R., and Bushway, S., *Enduring Risk: Old Criminal Records and Predictions of Future Criminal Involvement?*, CRIME AND DELINQUENCY 53 (2009), 64-83.
- Soothill, K and Francis, B, *When Do Ex-Offenders Become Like Non-Offenders?*, HOWARD JOURNAL OF CRIMINAL JUSTICE 48:4 (2009), 373-387.
- Bushway, S, Nieuwebeerta, P, and Blokland, A., *The Predictive Value of Criminal Background Checks: Do Age and Criminal History Affect Time to Redemption?*, CRIMINOLOGY 49 (Feb. 24, 2011), 27-60.

ODA does not propose to amend rule 173-9-07 of the Administrative Code in a way that would violate the agreement between the offices of the governor and attorney general and various state departments.

**12. 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?**

ODA did not consider any alternatives that would not implement the requirements for rules in R.C. §§ [173.38](#) and [173.381](#) or not uphold the options for rules in those sections agreed to by the offices of the governor and attorney general and the various state departments listed in ODA's response to question #11.

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

R.C. §§ 173.38, 173.381, 173.391, and 173.392 authorize only ODA (i.e., not any other state department) to develop these rules.

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**14. 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.**

Before the proposed amendments take effect, ODA will send an email to subscribers of our rule-notification service to feature the rules. Through regular monitoring (*i.e.*, auditing) requirements under [45 C.F.R. Part 75, Subpart F](#): (1) ODA regularly monitors AAAs for compliance with these rules and (2) AAAs regularly monitor providers for their compliance with AAA-provider agreements.

**Adverse Impact to Business**

**15. 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; and**

**Applicants/Employees/Self-Employed Providers:** Applicants and employees may be disqualified from paid jobs in direct-care positions serving consumers through ODA-administered programs if their status in any one or more of seven databases disqualifies them or their criminal record disqualifies them, unless exempted by R.C. §173.38 or §173.381, or rule 173-9-02 of the Administrative Code.

**Responsible Parties:** Responsible parties must review the status of applicants, employees, and self-employed providers in seven databases and request criminal records from BCII (and sometimes the FBI), unless exempted by R.C. §173.38 or §173.381, or rule 173-9-02 of the Administrative Code.

**b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

*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.*

Costs:

- The direct adverse impact of manually reviewing databases is \$0.00, because the databases are free to the public. The direct adverse impact of using ARCS to review databases is \$0.00, because the state offers ARCS to responsible parties free of charge. Reviewing databases before conducting a criminal records check can reduce costs for the responsible party. This is because it is unreasonable for a responsible party to pay for to check criminal records if an applicant/employee is already disqualified by his/her status in a free-to-review database.
- The direct adverse impacts of checking criminal records are the fees for obtaining criminal records. BCII determines part of the fee and the remainder is determined by [BCII's WebCheck locations](#). If a responsible party used the Dayton Police Department, the fee would be \$40 for checking criminal records with BCII or \$70 if checking criminal records with both BCII and the FBI. If a responsible party used the Miamisburg Police Department, the fee would be \$40 for checking criminal records with BCII or \$65 if checking criminal records with both BCII and the FBI. It is also possible for a responsible party to become a WebCheck location, which would enable the responsible party to not charge itself part of the fee that goes to the WebCheck location.

**Jobs:** Any job not obtained or lost is more the result of an applicant/employee disqualifying himself/herself rather than ODA's requirements to check databases and criminal records to see if the applicant/employee is disqualified.

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- A person would be disqualified from a direct-care position to provide services to consumers through a federally-funded program, which is almost every ODA-administered program, by their disqualifying listing in SAM or OIG databases even if not mentioned in ODA's rules. Likewise, a person would be disqualified from a direct-care position to provide services to consumers through a Medicaid-funded program (e.g., PACE, PASSPORT Program, Long-Term Care Consultation Program) by their listing in the Medicaid exclusion/suspension list even if not mentioned in ODA's rules. In other cases, these rules determine that a person listed as a sex offender, abuser, etc. are disqualified from a direct-care position serving consumers through ODA-administered programs even if being listed in those databases would not otherwise disqualify the person apart from ODA's rules.
- A person would be disqualified by their criminal record as provided by BCII or the FBI, although rule 173-9-07 of the Administrative Code establishes situations in which responsible parties may hire or retain the person, enter into an AAA-provider agreement with the person as a self-employed provider, or certify the person as a self-employed provider.

Time:

- Because most persons will not appear negatively in the databases, ODA estimates it takes approximately five minutes per applicant/employee for a responsible party to manually review all seven databases. However, if the responsible party enrolls in ARCS, ARCS will automatically review the seven databases on a daily basis to see if an employee's status in those databases is ever disqualifying. Therefore, a responsible party using ARCS is effectively free from any ongoing duties to manually review those databases again.
- ODA estimates that it up to an hour to send an applicant or employee to obtain criminal records if the responsible party sent the applicant or employee to one of [BCII's WebCheck locations](#) to provide fingerprints since even the least-populated county in Ohio (Vinton County) has a WebCheck location. If the responsible party is also a WebCheck location or used a mobile WebCheck service that met the applicant or employee at the workplace, it would not incur this time expense. Additionally, if the responsible party enrolls in Rapback with BCII, Rapback will automatically check an employee's criminal records on a daily basis to see if the employee's criminal record is ever disqualifying. BCII charges \$5/employee/year for this service. Therefore, a responsible party using Rapback is effectively free from any ongoing duties to send employees to a WebCheck vendor to initiate a check of criminal records.
- If an applicant's or employee's criminal record contains a disqualifying offense, Google Analytics of codes.ohio.gov for a 99-week period, showed that the average engagement time for a view of rule 173-9-07 of the Administrative Code was 3 minutes and 32 seconds. Therefore, ODA estimates that it takes 3 minutes and 32 seconds on average to determine if it's possible to hire an applicant, or retain an employee, in a direct-care position who has a disqualifying criminal record.

**16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors.*)**

Yes. ODA proposes to reduce the regulatory burden of Chapter 173-9 of the Administrative Code in the following ways:

- No longer consider the offense of illegal use or possession of marihuana [marijuana] drug paraphernalia under R.C. §2925.141 to be a disqualifying offense. This will comply with [Senate Bill 288 \(134<sup>th</sup> G.A.\)](#).
- No longer require providers who are subject to Ohio's new home health licensure requirements to be subject to this chapter of rules.

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- No longer require responsible parties that are agency providers to conduct database reviews before conducting criminal records checks.
- No longer require responsible parties to maintain an applicant and employee roster, except in the case of FBI records.
- Simplify the rules by eliminating information that is covered in the Ohio Revised Code that is not often viewed and unnecessary to repeat.
- Encourage responsible parties to enroll in ARCS and rapback, which will save responsible parties time and money. Please review ODA's response to question #15 for more information.

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

These rules ensure the health and safety of individuals enrolled in ODA-administered programs.

ODA provides administrative funds to AAAs and PAAs to cover administrative costs associated with their roles in ODA-administered programs, including their roles as responsible parties for background checks under R.C. [§173.38](#) for case managers, consultants for long-term care consultations, and other direct-care positions in AAAs and PAAs.

Providers only become responsible parties if they voluntarily want to be paid by ODA-administered programs for providing services. ODA-administered programs pay providers all-inclusive rates that are intended to cover the daily costs incurred in providing a service and employee-related costs. If providers participate in an ODA-administered program by entering into a contract or grant under R.C. [§173.392](#) through a competitive-bidding process, then the provider would add any costs to comply with background checks into its bid. If providers participate in an ODA-administered program by becoming an ODA-certified provider for the PASSPORT Program under R.C. [§173.391](#), then the provider sets the price that it bills to the PASSPORT Program. In turn, the PASSPORT Program pays each provider the amount the provider bills, so long as the price billed does not exceed the maximum that the Ohio Dept. of Medicaid (ODM) allows per unit. In the appendix to rule [5160-1-06.1](#) of the Administrative Code, ODM establishes the units of service for the PASSPORT Program and the maximum-allowable payment for each unit.

**Regulatory Flexibility**

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

Because the primary purpose of these rules is to ensure the health and safety of individuals enrolled in ODA-administered programs, the rules treat all providers the same, regardless of their size.

**19. 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?**

ODA's primary concern is the health and safety of individuals receiving services from ODA-certified providers. Whenever possible, ODA or its designees will treat administrative violations that do not involve health and safety as opportunities for improvement through warning notices and solicitation of corrective action.

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

ODA and its designees are available to help providers of all sizes with their questions. Any person may contact [Tom Simmons](#), ODA's policy development manager, with questions about these rules.

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