

173-9-01

Background checks for paid direct-care positions: introduction and definitions.

(A) Introduction: ~~Chapter 173-9 of the Administrative Code~~ This chapter implements sections 173.38 and 173.381 of the Revised Code, which require responsible parties to review databases and check criminal records when hiring an applicant for, or retaining an employee in, a paid direct-care position.

(B) Definitions for ~~Chapter 173-9 of the Administrative Code~~ this chapter:

- (1) "Area agency on aging" has the same meaning as in section 173.14 of the Revised Code.
- (2) "Applicant" means a person that a responsible party is giving final consideration for hiring into a paid direct-care position that is a full-time, part-time, or temporary position that involves providing ~~goods or services to consumers or individuals~~ through an ODA-administered program, even if an employment service refers the person to the responsible party. "Applicant" includes a person that a consumer ~~or individual~~ has under final consideration for hiring as a participant-directed or self-directed provider. "Applicant" does not include a volunteer.
- (3) "BCII" means "the bureau of criminal identification and investigation" and includes the superintendent of BCII.
- (4) "Check criminal records" means to conduct a criminal records check.
- (5) "Community-based long-term care services" means community-based long-term care services that are provided under any ODA-administered program.
- (6) "Consumer" means a person who receives community-based long-term care services through a program that ODA administers ~~that does not require provider certification.~~ "Consumer" includes individuals in the PASSPORT and assisted living programs and participants in PACE.
- (7) "Criminal records" has the same meaning as "results of the criminal records check," "results," and "report" in sections 173.38 and 173.381 of the Revised Code when those sections use "results of the criminal records check," "results," and "report" to refer to the criminal records that BCII provides to responsible parties that conduct criminal records checks. Criminal records originate from BCII unless the context indicates that the criminal records originate from the FBI.

- (8) "Criminal records check" ("check") means the criminal records check described in section 173.38 or 173.381 of the Revised Code and Chapter 173-9 of the Administrative Code.
- (9) "Database reviews" means the database reviews ~~that rules under rule 173-9-03 and 173-9-03.1 of the Administrative Code requires.~~
- (10) "Direct-care position":
- (a) "Direct-care position" means an employment position in which an employee has either one or both of the following:
- (i) In-person contact with one or more consumers ~~or individuals.~~
- (ii) Access to one or more consumers' ~~(or individuals')~~ personal property or records.
- (b) "Direct-care position" does not include a position ~~that solely involves whose sole duties are~~ transporting people under Chapter 306. of the Revised Code (i.e., while working for a county transit system, regional transit authority, or regional transit commission).
- (11) "Disqualifying offense" means any offense listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code.
- (12) "Employee" means a person that a responsible party hired into a paid direct-care position that is a full-time, part-time, or temporary position that involves providing ~~goods or services to consumers or individuals~~ through an ODA-administered program, even if an employment service initially referred the person to the responsible party. "Employee" includes a participant-directed provider and a self-directed provider. "Employee" does not include a volunteer.
- (13) "FBI" means "federal bureau of investigation."
- (14) "Fire" has the same meaning as "terminate" in section 173.38 of the Revised Code when the "terminate" regards firing an employee.
- (15) "Hire" has the same meaning as "employ" in section 173.38 of the Revised Code when "employ" regards hiring an applicant.
- ~~(16) "Individual" means a person who receives community-based long-term care services through a program that ODA administers that requires provider certification.~~

- ~~(17)~~(16) "Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code.
- ~~(18)~~(17) "ODA" means "the Ohio department of aging."
- (18) "PACE organization" has the same meaning as in rule 173-50-01 of the Administrative Code.
- (19) "PASSPORT administrative agency" has the same meaning as in section 173.42 of the Revised Code.
- (20) "Provider" means a person or government entity that provides community-based long-term care services under an ODA-administered program.
- (21) "Release" has the same meaning as "terminate" in section 173.38 of the Revised Code when "terminate" regards releasing a conditionally-hired applicant.
- (22) "Request criminal records" means to request a criminal records check, unless the context indicates that the request is of criminal records from the FBI.
- (23) "Responsible party":
- (a) When hiring an applicant for, or retaining an employee in, a paid direct-care position, "responsible party" means the area agency on aging, PASSPORT administrative agency, provider, or sub-contractor.
 - (b) When hiring an applicant for, or retaining an employee in, a paid direct-care position in a participant-direction or self-direction arrangement, "responsible party" means the consumer ~~or individual~~.
 - (c) When considering a self-employed applicant for ODA-certification under section 173.391 of the Revised Code or a self-employed person already ODA-certified section 173.391 of the Revised Code, "responsible party" means ~~the~~ ODA or the PASSPORT administrative agency.
 - (d) When considering a self-employed bidder for an AAA-provider agreement under section 173.392 of the Revised Code or a self-employed person already in an AAA-provider agreement under section 173.392 of the Revised Code, "responsible party" means the area agency on aging.
- (24) "Retain" has the same meaning as "continue to employ" in section 173.38 of the Revised Code.
- (25) "Reviewing databases" means the action involved in database reviews.

- (26) "Self-employed" means the state of working for one's self with no employees. Non-agency and independent providers are self-employed. Participant-directed providers are not self-employed because the consumer ~~or individual~~ is the employer of record.
- (27) "Sub-contractor" means a provider that enters into a contract with a responsible party to provide a component of one or more of the other responsible party's direct-care positions. "Sub-contractor" includes a party that directly supplies ~~goods or services~~ to a consumer ~~or individual~~ on behalf of another responsible party. "Sub-contractor" does not include a party that indirectly supplies ~~goods or services~~ to a consumer ~~or individual~~ by directly providing the ~~goods or services~~ to a responsible party.
- (28) "Volunteer" means a person who serves in a direct-care position without receiving, or expecting to receive, any form of remuneration other than reimbursement for actual expenses.
- ~~(29) "Waiver agency" has the same meaning as in section 5164.342 of the Revised Code.~~

Effective:

Five Year Review (FYR) Dates: 7/20/2023

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 121.07, 173.01, 173.02, 173.38, 173.381, 173.391, 173.392; 42 U.S.C. 3025; 45 C.F.R. 1321.11
Rule Amplifies: 173.38, 173.381; 42 C.F.R. 460.68, 460.71
Prior Effective Dates: 07/11/1991, 03/04/1997 (Emer.), 07/31/1997, 12/27/2001, 04/17/2003, 12/28/2006, 01/01/2008, 02/15/2009, 08/11/2011, 01/01/2013, 04/01/2014, 02/01/2015, 08/01/2017