

TO BE RESCINDED

173-9-02 **Applicability.**

(A) Applicability criteria: Chapter 173-9 of the Administrative Code applies to any of the following responsible entities:

(1) Ombudsman services:

- (a) The office of the state long-term care ombudsman.
- (b) A regional long-term care ombudsman office.

(2) Direct-care services:

- (a) An agency provider that is an ODA-certified provider under section 173.391 of the Revised Code and Chapter 173-39 of the Administrative Code.
- (b) An agency provider that is a non-certified provider under section 173.392 of the Revised Code that has entered into a provider agreement under Chapter 173-3 or 173-4 of the Administrative Code.
- (c) A non-agency provider who is an ODA-certified provider under section 173.391 of the Revised Code and Chapter 173-39 of the Administrative Code.
- (d) A self-employed provider who is a non-certified provider under section 173.392 of the Revised Code that has entered into a provider agreement under Chapter 173-3 or 173-4 of the Administrative Code.
- (e) A consumer who is directing a consumer-directed individual provider who is an ODA-certified provider under section 173.391 of the Revised Code and Chapter 173-39 of the Administrative Code.
- (f) A consumer who is directing a consumer-directed personal care provider who is an ODA-certified provider under section 173.391 of the Revised Code and Chapter 173-39 of the Administrative Code.
- (g) A consumer who is directing a self-directed provider who is a non-certified provider under section 173.392 of the Revised Code that has entered into a provider agreement under Chapter 173-3 or 173-4 of

the Administrative Code.

- (h) A residential care facility that is an ODA-certified assisted-living provider under section 173.391 of the Revised Code and Chapter 173-39 of the Administrative Code.
- (i) A PACE organization, as a non-certified provider under section 173.392 of the Revised Code, but only for home and community-based services that the PACE organization provides. (cf., 42 C.F.R. 460.68 (October 1, 2011 edition))
- (j) An area agency on aging, but only for case-management services that the agency provides.

(B) Inapplicability criteria: Chapter 173-9 of the Administrative Code does not apply to the following responsible entities under limited conditions:

(1) Medicare-certified home health agencies:

- (a) Except as provided for in paragraph (B)(1)(b) of this rule, if the responsible entity is a medicare-certified home health agency that is subject to a database review or criminal records check under section 3701.881 of the Revised Code and Chapter 3701-60 of the Administrative Code, pursuant to division (B) of section 173.394 of the Revised Code, the agency is exempt from Chapter 173-9 of the Administrative Code.
- (b) If the agency operates as both a medicare-certified home health agency and an agency that provides direct-care services for an ODA-administered program, the agency is not exempt from Chapter 173-9 of the Administrative Code regarding any employee who provides a direct-care service other than medicare home health care regulated under section 3701.881 of the Revised Code because section 3701.881 of the Revised Code only regulates medicare-certified home health care. (For example, if a responsible entity provides an array of services including medicare-certified home health care, adult day services, congregate meals, home-delivered meals, and personal emergency response systems, Chapter 173-9 of the Administrative Code does not apply to the direct-care employees who only provide medicare-certified home health care, but does apply to direct-care employees who provide other direct-care services that ODA regulates.)

(2) Medicaid waiver agencies:

- (a) Except as provided in paragraphs (B)(2)(b), (B)(2)(c), and (B)(2)(d) of this rule, if a responsible entity is also a waiver agency, pursuant to division (B) of section 173.394 of the Revised Code, the responsible entity may require applicants and employees to undergo database reviews and criminal records checks in accordance with section 5111.033 of the Revised Code and rules 5101:3-45-07 and 5101:3-45-11 of the Administrative Code instead of Chapter 173-9 of the Administrative Code.
- (b) If rule 5101:3-45-07 of the Administrative Code exempts the responsible entities that are waiver agencies participating in ODA-administered programs, the responsible entity is subject to Chapter 173-9 of the Administrative Code instead of rule 5101:3-45-07 of the Administrative Code.
- (c) If the responsible entity operates as both a waiver agency and a non-certified provider, the responsible entity may only require applicants and employees to undergo database reviews and criminal records checks in accordance with section 5111.033 of the Revised Code and rules 5101:3-45-07 and 5101:3-45-11 of the Administrative Code if the applicant would (or the employee does) only provide direct-care services through a medicaid waiver program. (For example, if a responsible entity provides home-delivered meals through the PASSPORT program and also the Older Americans Act program, the only applicants and employees who are eligible to undergo database reviews and criminal records checks in accordance with section 5111.033 of the Revised Code and rules 5101:3-45-07 and 5101:3-45-11 of the Administrative Code instead of Chapter 173-9 of the Administrative Code are those employees who solely provide home-delivered meals through the PASSPORT program because it is a medicaid waiver program.)
- (d) If the responsible entity operates as a waiver agency, but provides a service that only pertains to an ODA-administered program, the responsible entity may only require applicants and employees to undergo database reviews and criminal records checks in accordance with section 5111.033 of the Revised Code and rules 5101:3-45-07 and 5101:3-45-11 of the Administrative Code if the applicant would (or the employee does) only provide direct-care services through a medicaid waiver program that the department of job and family services administers. (For example, the department of job and family services

does not administer assisted living services, consumer-directed services, or congregate meals.)

(3) PACE organizations:

- (a) Employees of a PACE organization who only provide direct-care services as specified persons or as employees of institutions or entities that are subject to criminal records checks under section 5111.032 of the Revised Code are exempt from Chapter 173-9 of the Administrative Code because Chapter 173-9 of the Administrative Code only regulates ombudsman services and direct-care services that are home and community-based services.
 - (b) Employees of a PACE organization who only provide direct-care services through a nursing facility or residential care facility that are subject to criminal records checks under Chapter 3701-13 of the Administrative Code are exempt from Chapter 173-9 of the Administrative Code because Chapter 173-9 of the Administrative Code only regulates ombudsman services and direct-care services that are home and community-based services.
- (4) Residential care facilities: If a residential care facility is not an ODA-certified assisted-living provider under section 173.391 of the Revised Code and Chapter 173-39 of the Administrative Code the facility is not subject to the criminal records check requirements under Chapter 173-9 of the Administrative Code. However, all residential care facilities are subject to the criminal records check requirements under Chapter 3701-13 of the Administrative Code.
- (5) Volunteers: Sections 173.27 and 173.394 of the Revised Code exempt volunteers from the criminal records check requirements under Chapter 173-9 of the Administrative Code.

Replaces: 173-9-02
Effective:
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Certification

Date

Promulgated Under: 119.03
Statutory Authority: 173.01, 173.02, 173.27, 173.38, 173.391, 173.392;
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 in 2006; 45 C.F.R. 1321.11 (10-01-2013
edition)
Rule Amplifies: 173.27, 173.38; 42 C.F.R. 460.68(a), 460.71(a)(1),
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