

## TO BE RESCINDED

173-9-04.1 **Background checks for paid direct-care positions: When to check criminal records, pay fees, and use forms (for the self-employed).**

(A) Database reviews first: The responsible party shall review databases on a self-employed provider before checking the self-employed provider's criminal records. If the database reviews disqualify the self-employed provider, the responsible party shall not conduct a criminal records check. If the database reviews did not disqualify the self-employed provider, the responsible party shall conduct a criminal records check.

(B) When to check criminal records:

WHEN TO CHECK CRIMINAL RECORDS		
SELF-EMPLOYED DIRECT-CARE POSITIONS	CHECK WHEN THE SELF-EMPLOYED PROVIDER APPLIES TO BECOME ODA-CERTIFIED OR BIDS FOR AN AAA-PROVIDER AGREEMENT (AGREEMENT)	CHECK AFTER THE SELF-EMPLOYED PROVIDER BECOMES ODA-CERTIFIED OR HAS ENTERED INTO AN AGREEMENT
Only delivers meals	Required	Not required
Only has access to consumers' or individuals' personal records	Required	Not required
Only provides a specified once-ever service	Required	Not required
All other self-employed direct-care positions not listed above	Required	Required

## START DATES &amp; DEADLINES FOR CHECKING CRIMINAL RECORDS

	START DATE	FIRST DEADLINE AFTER JANUARY 1, 2013	SUBSEQUENT DEADLINES
Before the self-employed provider applied to become an ODA-certified provider or before the self-employed provider bid for an agreement	Before the self-employed provider applied to become an ODA-certified provider or before the self-employed provider bid for an agreement	Fingerprinting before ODA certifies the self-employed provider or before an AAA enters into an agreement with the self-employed provider	Not applicable (See rows below)
Five-year schedule if the self-employed provider became an ODA-certified provider or entered into an agreement before 2008	Any time, but only if the database reviews don't disqualify the self-employed provider	2013 anniversary of certification or agreement + 30 days	Every 5th-year anniversary of certification or agreement + 30 days
Five-year schedule if the self-employed provider became an ODA-certified provider or entered into an agreement in 2008 or a later date	Any time, but only if the database reviews don't disqualify the self-employed provider	First 5th-year anniversary of certification or agreement + 30 days	Every 5th-year anniversary of certification or agreement + 30 days
Less-than five-year schedule	Any time, but only if the database reviews don't disqualify the self-employed provider	No deadline, so long as more frequent than every 5 years	No deadline, so long as more frequent than every 5 years

- (1) When a self-employed provider applies to become ODA-certified, or before bidding for an agreement, the responsible party shall check the self-employed provider's criminal records.
- (2) After becoming ODA-certified, or after entering into an agreement, the responsible party shall check the self-employed provider's criminal records at least once every five years, unless the self-employed provider's direct-care

position is listed under paragraph (B) of rule 173-9-02 of the Administrative Code:

- (a) Five-year schedule (pre-2008): If the self-employed provider became ODA-certified provider or entered into an agreement with ODA (or an area agency on aging) before January 1, 2008, the responsible party shall conduct a criminal records check on the self-employed provider no later than thirty days after the 2013 anniversary of the self-employed provider's certification or agreement, and no later than thirty days after each anniversary every five years after 2013. If the self-employed provider serves consumers and individuals both as an ODA-certified provider and through an agreement, the anniversary date is the anniversary of whichever occurred first: the certification or the agreement. A responsible party that follows this schedule is not required to wait until the self-employed provider's anniversary to conduct a criminal records check.
  - (b) Five-year schedule (2008-present): If the self-employed provider became an ODA-certified provider or entered into an agreement with ODA (or an area agency on aging) on or after January 1, 2008, the responsible party shall conduct a criminal records check on the self-employed provider no later than thirty days after the fifth anniversary of the self-employed provider's certification or agreement and no later than thirty days after each five-year anniversary. If the self-employed provider serves consumers and individuals both as an ODA-certified provider and through an agreement, the anniversary date is the anniversary of whichever occurred first: the certification or the agreement. A responsible party that follows this schedule is not required to wait until the self-employed provider's five-year anniversary to conduct a criminal records check.
  - (c) Less-than-five-year schedule: The responsible party may conduct criminal records checks on a self-employed provider more frequently than every five years. If the responsible party checks more frequently than every five years, the responsible party is not responsible for conducting criminal records checks according to the five-year schedules. If a responsible party complies with the requirements for rapback, the responsible party is conducting criminal records checks on a daily basis, which is a less-than-five-year schedule.
- (3) Reverification: If a responsible party received criminal records on the self-employed provider during the past year, the responsible party may request a reverification of the criminal record from BCII. The reverification of the

criminal record has the same validity as the criminal records received during the past year.

(C) Sealed records: Division (B)(1) of section 109.572 of the Revised Code requires BCII to include sealed criminal records in its criminal records reports for criminal records checks conducted under section 173.381 of the Revised Code.

(D) When to check the FBI's criminal records: If a self-employed provider has not been a resident of Ohio for the five-year period immediately preceding the date the responsible party must check criminal records, the responsible party shall request that BCII also obtain the FBI's criminal records.

(E) Investigation fees:

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

(2) The responsible party may charge the self-employed provider a fee for checking criminal records so long as the fee does not exceed the amount the responsible party pays to BCII.

(F) Forms: Unless the procedures that BCII established in rule 109:5-1-01 of the Administrative Code require providing fingerprints electronically and requesting criminal records electronically, the responsible party shall complete the following two tasks:

(1) The responsible party shall use the form(s) that BCII requires in division (C)(1) of section 109.572 of the Revised Code.

(2) The responsible party shall forward the completed fingerprints and forms to BCII for processing.

Effective: 11/1/2023

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

CERTIFIED ELECTRONICALLY

---

Certification

09/29/2023

---

Date

Promulgated Under: 119.03  
Statutory Authority: 121.07, 173.01, 173.02, 173.381, 173,391, 173.392; 42 U.S.C. 3025; 45 C.F.R. 1321.11  
Rule Amplifies: 109.572, 173.381  
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