

173-9-04

Background checks: paid direct-care positions: ~~When when~~ to check criminal records, inform applicants, charge fees, and use forms (except for the self-employed).

(A) Database reviews first: The responsible party shall conduct database reviews on each applicant (~~pre-hire~~) (pre-hire) and each employee (post-hire) before conducting a criminal records check. If the database reviews disqualify the applicant or employee, the responsible party shall not conduct a criminal records check. If the database reviews did not disqualify the applicant or employee, the responsible party shall conduct a criminal records check.

(B) When to check criminal records:

WHEN TO CHECK CRIMINAL RECORDS		
POSITION	CHECK WHEN APPLICANTS (PRE-HIRE)	CHECK WHEN EMPLOYEES (POST-HIRE)
Ombudsman position	Required	Required
Direct-care position: Only delivers meals	Required	Not required
Direct-care position: Only has access to consumers' <u>or individuals'</u> personal records	Required	Not required
Direct-care position: Only provides a specified once-ever service	Required	Not required
Transportation position with a county transit system, regional transit authority, or regional transit commission.	Not required	Not required
Transportation position: other than a position with a county transit system, regional transit authority, or regional transit commission	Required	Required
All direct-care positions not listed above	Required	Required

START DATES & DEADLINES FOR CHECKING CRIMINAL RECORDS			
	START DATE	FIRST DEADLINE AFTER JANUARY 1, 2013	SUBSEQUENT DEADLINES
Applicants (pre-hire)	When applicant is under final	Fingerprinting before hiring the	Not applicable. (See rows for employees.)

	consideration for paid employment, but only if the database reviews don't disqualify the applicant	applicant and before the end of the sixty-day period of conditional hiring (if the responsible party utilized the conditional-hiring option in rule 173-9-05 of the Administrative Code)	
Employees (post-hire): Five-year schedule for pre-2008 hire dates	Any time, but only if the database reviews don't disqualify the employee	2013 hiring anniversary + 30 days	Every 5th-year hiring anniversary + 30 days
Employees (post-hire): Five-year schedule for 2008-present hire dates	Any time, but only if the database reviews don't disqualify the employee	First 5th-year hiring anniversary + 30 days	Every 5th-year hiring anniversary + 30 days
Employees (post-hire): Less-than five-year schedule	Any time, but only if the database reviews don't disqualify the employee	No deadline, so long as more frequent than every 5 years	No deadline, so long as more frequent than every 5 years

~~(1) Applicants (pre-hire):~~

~~(a) Ombudsman position: The responsible party shall conduct a criminal records check on each applicant.~~

~~(b)(1) Direct-care position: Applicants (pre-hire):~~ The responsible party shall conduct a criminal records check on each applicant. The responsible party shall do so even if paragraph (B) of rule 173-9-02 of the Administrative Code would not require the responsible party to check the person again after the responsible party hired the applicant.

~~(2) Employees (post-hire):~~

~~(a)(2) Ombudsman Direct-care position:~~ According to one of the following three schedules, the responsible party shall conduct a criminal records check on each employee at least once every five years:

~~(i)~~(a) Five-year schedule for pre-2008 hire dates: If the responsible party hired the employee before January 1, 2008, the responsible party shall conduct a criminal records check on the employee no later than thirty days after the 2013 anniversary of the employee's date of hire and no later than thirty days after each five-year anniversary after 2013. A responsible party that follows this schedule is not required to wait until the employee's anniversary to conduct a criminal records check. The responsible party has five years, plus thirty days, to conduct the next check.

~~(ii)~~(b) Five-year schedule for 2008-present hire dates: If the responsible party hired the employee on or after January 1, 2008, the responsible party shall conduct a criminal records check on the employee no later than thirty days after the fifth anniversary of the employee's date of hire and no later than thirty days after each five-year anniversary. A responsible party that follows this schedule is not required to wait until the employee's five-year anniversary to conduct a criminal records check. The responsible party has five years, plus thirty days, to conduct the next check.

~~(iii)~~(c) Less-than-five-year schedule: The responsible party may conduct criminal records checks on an employee more frequently than every five years. If the responsible party checks more frequently than every five years, the responsible party is not required to conduct 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.

~~(b) Direct care position: According to one of the following three schedules, the responsible party shall conduct a post hire criminal records check on each employee at least once every five years, unless the employee's direct care position is listed under paragraph (B) of rule 173-9-02 of the Administrative Code:~~

~~(i) Five-year schedule for pre-2008 hire dates: If the responsible party hired the employee before January 1, 2008, the responsible party shall conduct a criminal records check on the employee no later than thirty days after the 2013 anniversary of the employee's date of hire and no later than thirty days after each five-year anniversary. A responsible party that follows this schedule is not required to wait until the employee's anniversary to conduct a criminal records check. The responsible party has five years, plus thirty days, to conduct the next check:~~

- ~~(ii) Five-year schedule for 2008 present hire dates: If the responsible party hired the employee on or after January 1, 2008, the responsible party shall conduct a criminal records check on the employee no later than thirty days after the fifth anniversary of the employee's date of hire and no later than thirty days after each five-year anniversary. A responsible party that follows this schedule is not required to wait until the employee's five-year anniversary to conduct a criminal records check. The responsible party has five years, plus thirty days, to conduct the next check.~~
- ~~(iii) Less than five-year schedule: The responsible party may conduct criminal records checks on an employee more frequently than every five years. If the responsible party checks more frequently than every five years, the responsible party is not required to conduct criminal records checks according to the five-year schedules.~~

- (3) Reverification: If any person has requested a criminal records check on an applicant or employee in the past year that, according to division (B)(1) of section 109.572 of the Revised Code, requires BCII to include sealed criminal records in the criminal records it returns to the person making the request, 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 ~~obtained~~ 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 the criminal records that it returns to responsible parties.

~~(C)~~(D) When to check the FBI's criminal records:

- (1) Residency: If an applicant or employee does not provide the responsible party with evidence that he or she has been a resident of Ohio for the five-year period immediately preceding the date the responsible party must request a criminal records check, or if the applicant or employee does not provide the responsible party with evidence that BCII has requested his or her criminal records from the FBI within the five-year period immediately preceding the date the responsible party requests the criminal records check, the responsible party shall request that BCII obtain criminal records from the FBI as part of the criminal records check.
- (2) Will of the responsible party: If an applicant or employee provides the responsible party with evidence that he or she has been a resident of Ohio for the five-year period immediately preceding the date the responsible party requests the criminal records check, the responsible party may request that

BCII obtain criminal records from the FBI as part of the criminal records check.

~~(D)~~(E) Inform applicant: When an applicant initially applies for a ~~paid ombudsman position or~~ a paid direct-care position (or when an employment service initially refers an applicant to a responsible party), the responsible party shall inform the applicant of the following:

- (1) If the responsible party gives the applicant final consideration for hiring into the position, the following shall happen:
 - (a) The responsible party shall review the applicant's status in the databases listed in rule 173-9-03 of the Administrative Code.
 - (b) Unless the database reviews reveal that the responsible party shall not hire the applicant, the responsible party shall conduct a criminal records check and the applicant shall provide a set of his or her ~~fingerprints~~ ~~impressions~~ fingerprints as part of the ~~the~~ criminal records check.
- (2) If the responsible party hires the applicant, as a condition to retain the position, the responsible party shall conduct post-hire database reviews and criminal records checks according to one of the three schedules listed under paragraph (B)(2) of this rule.
- (3) If the responsible party intends to charge the applicant the fees for checking criminal records, the responsible party shall inform the applicant of the fees that divisions (C)(2) and (C)(3) of section 109.572 of the Revised Code authorize for checking criminal records, the responsible party shall inform the applicant of the fees at the time of application.

~~(E)~~(F) Investigation fees:

- (1) The responsible party shall pay 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 applicant a fee for checking criminal records so long as the fee does not exceed the amount the responsible party pays to BCII, but only if both of the following apply:
 - (a) At the time of initial application, the responsible party informed the applicant of the fee's amount and that the responsible party would not

hire the applicant if the applicant did not pay the fee.

- (b) The medicaid program does not pay the responsible party for the fee it pays to BCII.

~~(F)~~(G) Forms: Unless the applicant or employee follows the procedures that BCII established in rule 109:5-1-01 of the Administrative Code for providing ~~fingerprint impressions~~ fingerprints electronically and requesting criminal records electronically, the responsible party shall complete the following two tasks:

- (1) The responsible party shall provide each applicant or employee with the form(s) that BCII requires in division (C)(1) of section 109.572 of the Revised Code.
- (2) The responsible party shall obtain the completed fingerprints and forms, then forward them to BCII for processing.

~~(G)~~(H) Referrals from employment services: A responsible party is not required to request a criminal records check on an applicant or employee that an employment service refers to the responsible party to fill a full-time, part-time, or temporary direct-care position if the employment service satisfies one of the two following criteria:

- (1) The responsible party ~~obtains~~ receives copies of records from the employment service that verify the following two items:
 - (a) The employment service reviewed databases and the applicant's or employee's status in the databases and the status did not did not disqualify him or her.
 - (b) The employment service ~~obtained~~ received the applicant's criminal record less than a year before the employment service referred the applicant or employee to the responsible party and the applicant's criminal record did not list a disqualifying offense.
- (2) The responsible party conditionally hires a referred applicant according to the requirements for conditionally hiring referred applicants in rule 173-9-05 of the Administrative Code.

Effective:

Five Year Review (FYR) Dates: 05/04/2017

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 173.01, 173.02, 173.38, 173.391, 173.392; Sections 305(a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended by the Older Americans Act Reauthorization Act of 2016; 45 C.F.R. 1321.11 (October, 2016 edition).
Rule Amplifies: 109.572, 173.38; 42 C.F.R. 460.68(a), 460.71(b)(1), 460.71(b)(2) (November 15, 2016).
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