

TO BE RESCINDED

173-9-05

Background checks for paid direct-care positions: conditional hiring.

(A) Applicability:

- (1) This rule addresses the conditional hiring of applicants for paid direct-care positions with agency providers or with consumers or individuals through participant-directed arrangements; the reasons to release conditionally-hired applicants; and the hiring of released applicants.
- (2) This rule does not require employees who hold paid direct-care positions to enter a conditional status when they undergo post-hire criminal records checks.
- (3) This rule does not authorize a responsible party to offer a conditional status to self-employed applicants for ODA certification or self-employed bidders on AAA-provider agreements.

(B) Sixty-day period (no referral from an employment service): A responsible party may conditionally hire an applicant for up to sixty days while it waits for the applicant's criminal records, but only if the responsible party complies with the following requirements:

- (1) Database reviews: The responsible party shall not conditionally hire an applicant unless the responsible party conducted database reviews and the applicant's status in the databases was not disqualifying.
- (2) Criminal records check: The responsible party shall not conditionally hire an applicant unless the responsible party requests a criminal records check before the following deadlines:
 - (a) "WebCheck": If the responsible party requires the applicant to provide his or her fingerprints directly to BCII by using "WebCheck," the responsible party shall not conditionally hire the applicant until the applicant provides his or her fingerprints to a "WebCheck" vendor.
 - (b) Fingerprint impression sheet: If the responsible party does not require the applicant to provide his or her fingerprints directly to BCII by using "WebCheck," the responsible party shall not conditionally hire the applicant until the responsible party receives the applicant's fingerprints on a completed fingerprint impression sheet. If the responsible party conditionally hires the applicant after obtaining the fingerprint impression sheet, the responsible party shall provide the sheet to BCII

no later than five business days after the responsible party conditionally hires the applicant.

(C) Sixty-day period (referral from an employment service):

- (1) Forward letter to responsible party: If an employment service refers an applicant to the responsible party, the responsible party may conditionally hire an applicant into a paid direct-care position for up to sixty days, but only if the employment service (or the applicant) forwards a letter to the responsible party that the employment service printed on its letterhead, that a designated official of the employment service dated and signed, and that verifies the following five items:
 - (a) The employment service conducted database reviews and the applicant's status in the databases and the status did not disqualify him or her.
 - (b) The employment service requested the applicant's criminal record from BCII.
 - (c) The requested criminal records check is to include a determination of whether the applicant has been convicted of, or pleaded guilty to, a disqualifying offense.
 - (d) The employment service has not, as of the date of the letter, received the applicant's criminal record from BCII.
 - (e) The employment service will promptly forward a copy of the criminal record to the responsible party when the employment service receives it.
- (2) Forward criminal records to responsible party: If a responsible party conditionally hires an applicant that an employment service referred to the responsible party, the employment service shall promptly forward the criminal records to the responsible party when the employment service receives the criminal records.

(D) Three reasons to release an applicant:

- (1) Sixty-day period ends:
 - (a) Only BCII check required: The responsible party shall release the conditionally-hired applicant from a paid direct-care position if more than sixty days passed since the day the responsible party requested a criminal records and the responsible party has not yet received the criminal records.

- (b) BCII and FBI checks required: The responsible party is not required to release the conditionally-hired applicant if more than sixty days passed since the responsible party requested criminal records from the FBI and the responsible party has not yet received the FBI's criminal records, but only if section 173.38 of the Revised Code required the responsible party to request criminal records from the FBI, and one of the following two conditions exist:
 - (i) The responsible party received criminal records from BCII before the sixty-day period ended and the criminal records from BCII did not list a disqualifying offense.
 - (ii) The responsible party received criminal records from BCII before the sixty-day period ended and the criminal records from BCII listed a disqualifying offense, but the terms of rule 173-9-07 of the Administrative Code would allow the responsible party to hire the applicant, and the responsible party would be willing to hire the applicant under the terms of rule 173-9-07 of the Administrative Code if the forthcoming criminal records from the FBI would not prohibit the responsible party from doing so.
- (2) Disqualifying offense on record: The responsible party shall release the conditionally-hired applicant if the applicant's criminal record lists a disqualifying offense, unless the responsible party is able and willing to hire the applicant under the terms of rule 173-9-07 of the Administrative Code. If the responsible party is unable or unwilling to hire an applicant with a disqualifying offense on his or her criminal record, the responsible party shall release the conditionally-hired applicant regardless of the day during the sixty-day period that the responsible party received the criminal records.
- (3) Deception: If a conditionally-hired applicant made any attempt to deceive the responsible party about his or her criminal record, the attempt is just cause for the responsible party to release the conditionally-hired applicant.
- (E) Hiring released applicants: If a responsible party released a conditionally-hired applicant to comply with the sixty-day limit in paragraph (D)(1)(a) of this rule, the responsible party may resume hiring the released applicant after the responsible party receives the criminal records if either one of the following two conditions exist:
 - (1) The applicant's criminal record does not list a disqualifying offense.

- (2) The applicant's criminal record lists a disqualifying offense, but the responsible party is able and willing to hire the applicant under the terms of rule 173-9-07 of the Administrative Code.

Effective:

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

Certification

Date

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U.S.C. 3025; 45 C.F.R. 1321.11

Rule Amplifies: 173.38; 42 C.F.R. 460.68, 460.71

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