

## TO BE RESCINDED

173-9-07.1                    **Background checks for paid direct-care positions: certifying or entering into an AAA-provider agreement with a self-employed provider who has a disqualifying offense on his or her criminal record.**

A responsible party shall not reject a self-employed provider's application for ODA certification, revoke a self-employed provider's certification, reject a bid from a self-employed provider for an AAA-provider agreement (agreement), or terminate that agreement solely because the self-employed provider has a disqualifying offense on his or her criminal record if no exclusionary period under paragraph (A) of this rule prohibits certification or an agreement, the limited grandfathering under paragraph (B) of this rule applies, the self-employed provider attained a certificate under paragraph (C) of this rule, or the self-employed provider attained a pardon under paragraph (D) of this rule.

(A) Disqualifying offense exclusionary periods: A responsible party shall not reject a self-employed provider's application for ODA certification, revoke a self-employed provider's certification, reject a bid from a self-employed provider for an agreement, or terminate that agreement solely because the self-employed provider has a disqualifying offense on his or her criminal record, unless an exclusionary period in paragraph (A)(1), (A)(2), (A)(3), or (A)(4) of this rule prohibits ODA certification or an agreement.

(1) Tier I: permanent exclusion: A responsible party shall reject a self-employed provider's application for ODA certification, revoke a self-employed provider's certification, reject a bid from a self-employed provider for an agreement, or terminate that agreement if the self-employed provider was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code:

- (a) 2903.01 (aggravated murder);
- (b) 2903.02 (murder);
- (c) 2903.03 (voluntary manslaughter);
- (d) 2903.11 (felonious assault);
- (e) 2903.15 (permitting child abuse);
- (f) 2903.16 (failing to provide for a functionally-impaired person);
- (g) 2903.34 (patient abuse or neglect);

- (h) 2903.341 (patient endangerment);
- (i) 2905.01 (kidnapping);
- (j) 2905.02 (abduction);
- (k) 2905.32 (human trafficking);
- (l) 2905.33 (unlawful conduct with respect to documents);
- (m) 2907.02 (rape);
- (n) 2907.03 (sexual battery);
- (o) 2907.04 (unlawful sexual conduct with a minor, formerly corruption of a minor);
- (p) 2907.05 (gross sexual imposition);
- (q) 2907.06 (sexual imposition);
- (r) 2907.07 (importuning);
- (s) 2907.08 (voyeurism);
- (t) 2907.12 (felonious sexual penetration);
- (u) 2907.31 (disseminating matter harmful to juveniles);
- (v) 2907.32 (pandering obscenity);
- (w) 2907.321 (pandering obscenity involving a minor);
- (x) 2907.322 (pandering sexually-oriented matter involving a minor);
- (y) 2907.323 (illegal use of a minor in nudity-oriented material or performance);
- (z) 2909.22 (soliciting or providing support for an act of terrorism);
- (aa) 2909.23 (making terroristic threats);
- (bb) 2909.24 (terrorism);
- (cc) 2913.40 (medicaid fraud);

- (dd) If related to another offense under paragraph (A)(1) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity);
  - (ee) A conviction related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct involving a federal or state-funded program, excluding the disqualifying offenses listed in section 2913.46 (illegal use of SNAP or WIC program benefits) and paragraph (A)(2)(a)(xiii) of this rule; or,
  - (ff) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described in paragraphs (A)(1)(a) to (A)(1)(ee) of this rule.
- (2) Tier II: ten-year exclusionary period:
- (a) For ten years after the date that the self-employed provider was fully discharged from all imprisonment, probation, or parole, the responsible party shall reject a self-employed provider's application for ODA certification, revoke a self-employed provider's certification, reject a bid from a self-employed provider for an agreement, or terminate that agreement if self-employed provider was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code:
    - (i) 2903.04 (involuntary manslaughter);
    - (ii) 2903.041 (reckless homicide);
    - (iii) 2905.04 (child stealing, as it existed before July 1, 1996);
    - (iv) 2905.05 (child enticement);
    - (v) 2905.11 (extortion);
    - (vi) 2907.21 (compelling prostitution);
    - (vii) 2907.22 (promoting prostitution);
    - (viii) 2907.23 (enticement or solicitation to patronize a prostitute; procurement of a prostitute for another);
    - (ix) 2909.02 (aggravated arson);
    - (x) 2909.03 (arson);

- (xi) 2911.01 (aggravated robbery);
- (xii) 2911.11 (aggravated burglary);
- (xiii) 2913.46 (illegal use of SNAP or WIC program benefits);
- (xiv) 2913.48 (worker's compensation fraud);
- (xv) 2913.49 (identity fraud);
- (xvi) 2917.02 (aggravated riot);
- (xvii) 2923.12 (carrying concealed weapons);
- (xviii) 2923.122 (illegal conveyance or possession of deadly weapon or dangerous ordnance in a school safety zone, illegal possession of an object indistinguishable from a firearm in a school safety zone);
- (xix) 2923.123 (illegal conveyance, possession, or control of deadly weapon or ordnance into a courthouse);
- (xx) 2923.13 (having weapons while under disability);
- (xxi) 2923.161 (improperly discharging a firearm at or into a habitation or school);
- (xxii) 2923.162 (discharge of firearm on or near prohibited premises);
- (xxiii) 2923.21 (improperly furnishing firearms to a minor);
- (xxiv) 2923.32 (engaging in a pattern of corrupt activity);
- (xxv) 2923.42 (participating in a criminal gang);
- (xxvi) 2925.02 (corrupting another with drugs);
- (xxvii) 2925.03 (trafficking in drugs);
- (xxviii) 2925.04 (illegal manufacture of drugs or cultivation of marijuana);
- (xxix) 2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs)

(xxx) 3716.11 (placing harmful or hazardous objects in food or confection);

(xxxi) If related to another offense under paragraph (A)(2)(a) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or,

(xxxii) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described under paragraphs (A)(2)(a)(i) to (A)(2)(a)(xxxi) of this rule.

(b) A self-employed provider is subject to a fifteen-year exclusionary period if the self-employed provider was convicted of multiple disqualifying offenses, including an offense listed in paragraph (A)(2)(a) of this rule, and another offense or offenses listed in paragraph (A)(2)(a), (A)(3)(a), or (A)(4)(a) of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act.

(3) Tier III: seven-year exclusionary period:

(a) For seven years after the date that the self-employed provider was fully discharged from all imprisonment, probation, or parole, the responsible party shall reject a self-employed provider's application for ODA certification, revoke a self-employed provider's certification, reject a bid from a self-employed provider for an agreement, or terminate that agreement if the self-employed provider was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code:

(i) 959.13 (cruelty to animals);

(ii) 959.131 (prohibitions concerning companion animals);

(iii) 2903.12 (aggravated assault);

(iv) 2903.21 (aggravated menacing);

(v) 2903.211 (menacing by stalking);

(vi) 2905.12 (coercion);

(vii) 2909.04 (disrupting public services);

(viii) 2911.02 (robbery);

- (ix) 2911.12 (burglary);
- (x) 2913.47 (insurance fraud);
- (xi) 2917.01 (inciting to violence);
- (xii) 2917.03 (riot);
- (xiii) 2917.31 (inducing panic);
- (xiv) 2919.22 (endangering children);
- (xv) 2919.25 (domestic violence);
- (xvi) 2921.03 (intimidation);
- (xvii) 2921.11 (perjury);
- (xviii) 2921.13 (falsification, falsification in a theft offense, falsification to purchase a firearm, or falsification to obtain a concealed handgun license);
- (xix) 2921.34 (escape);
- (xx) 2921.35 (aiding escape or resistance to lawful authority);
- (xxi) 2921.36 (illegal conveyance of weapons, drugs, or other prohibited items onto the grounds of a detention facility or institution);
- (xxii) 2925.05 (funding drug trafficking);
- (xxiii) 2925.06 (illegal administration or distribution of anabolic steroids);
- (xxiv) 2925.24 (tampering with drugs);
- (xxv) 2927.12 (ethnic intimidation);
- (xxvi) If related to another offense under paragraph (A)(3)(a) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or,
- (xxvii) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially

equivalent to any of the offenses or violations described under paragraphs (A)(3)(a)(i) to (A)(3)(a)(xxvii) of this rule.

- (b) A self-employed provider is subject to a ten-year exclusionary period if he or she was convicted of multiple disqualifying offenses, including an offense listed in paragraph (A)(3)(a) of this rule, and another offense or offenses listed in paragraph (A)(3)(a) or (A)(4)(a) of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act.

(4) Tier IV: five-year exclusionary period:

- (a) For five years after the date that the self-employed provider was fully discharged from all imprisonment, probation, or parole, the responsible party shall reject a self-employed provider's application for ODA certification, revoke a self-employed provider's certification, reject a bid from a self-employed provider for an agreement, or terminate that agreement if the self-employed provider was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code:

(i) 2903.13 (assault);

(ii) 2903.22 (menacing);

(iii) 2907.09 (public indecency);

(iv) 2907.24 (soliciting, engaging in solicitation after a positive HIV test);

(v) 2907.25 (prostitution);

(vi) 2907.33 (deception to obtain matter harmful to juveniles);

(vii) 2911.13 (breaking and entering);

(viii) 2913.02 (theft);

(ix) 2913.03 (unauthorized use of a vehicle);

(x) 2913.04 (unauthorized use of computer, cable, or telecommunication property);

(xi) 2913.05 (telecommunications fraud);

(xii) 2913.11 (passing bad checks);

- (xiii) 2913.21 (misuse of credit cards);
- (xiv) 2913.31 (forgery, forging identification cards);
- (xv) 2913.32 (criminal simulation);
- (xvi) 2913.41 (defrauding a rental agency or hostelry);
- (xvii) 2913.42 (tampering with records);
- (xviii) 2913.43 (securing writings by deception);
- (xix) 2913.44 (personating an officer);
- (xx) 2913.441 (unlawful display of law enforcement emblem);
- (xxi) 2913.45 (defrauding creditors);
- (xxii) 2913.51 (receiving stolen property);
- (xxiii) 2919.12 (unlawful abortion);
- (xxiv) 2919.121 (unlawful abortion upon minor);
- (xxv) 2919.123 (unlawful distribution of an abortion-inducing drug);
- (xxvi) 2919.23 (interference with custody);
- (xxvii) 2919.24 (contributing to the unruliness or delinquency of a child);
- (xxviii) 2921.12 (tampering with evidence);
- (xxix) 2921.21 (compounding a crime);
- (xxx) 2921.24 (disclosure of confidential information);
- (xxxi) 2921.32 (obstructing justice);
- (xxxii) 2921.321 (assaulting or harassing a police dog, horse, or service animal);
- (xxxiii) 2921.51 (impersonation of peace officer);
- (xxxiv) 2925.09 (illegal administration, dispensing, distribution, manufacture, possession, selling, or using of any dangerous veterinary drug);



- (xxxv) 2925.11 (drug possession), unless a minor drug possession offense;
  - (xxxvi) 2925.13 (permitting drug abuse);
  - (xxxvii) 2925.22 (deception to obtain a dangerous drug);
  - (xxxviii) 2925.23 (illegal processing of drug documents);
  - (xxxix) 2925.36 (illegal dispensing of drug samples);
  - (xl) 2925.55 (unlawful purchase of a pseudoephedrine product, underage purchase of a pseudoephedrine product, using false information to purchase a pseudoephedrine product, improper purchase of a pseudoephedrine product);
  - (xli) 2925.56 (unlawfully selling a pseudoephedrine product; unlawfully selling a pseudoephedrine product to a minor; improper sale of a pseudoephedrine product); or,
  - (xlii) If related to another offense under paragraph (A)(4)(a) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or,
  - (xliii) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described under paragraph (A)(4)(a)(i) to (A)(4)(a)(xli) of this rule.
- (b) A self-employed provider is subject to a seven-year exclusionary period if he or she was convicted of multiple disqualifying offenses listed in paragraph (A)(4)(a) of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act.
- (5) Tier V: no exclusionary period: The responsible party shall not reject a self-employed provider's application for ODA certification, revoke a self-employed provider's certification, reject a bid from a self-employed provider for an agreement, or terminate that agreement solely because the self-employed provider was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code:
- (a) 2925.11 (drug possession), but only if a minor drug possession offense;

- (b) 2925.14 (illegal use, possession, dealing, selling, or advertising of drug paraphernalia);
  - (c) 2925.141 (illegal use or possession of marihuana drug paraphernalia); or,
  - (d) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described under paragraph (A)(5) of this rule.
- (B) Limited grandfathering: The responsible party shall not reject a self-employed provider's application for ODA certification, revoke a self-employed provider's certification, reject a bid from a self-employed provider for an agreement, or terminate that agreement solely because the self-employed provider was convicted of, or pleaded guilty to, an offense listed under paragraph (A)(4) of this rule, but only if:
  - (1) The self-employed provider was certified or entered into an agreement before January 1, 2013;
  - (2) The self-employed provider's conviction or guilty plea occurred before January 1, 2013; and,
  - (3) The self-employed provider considered the nature and seriousness of his or her offense(s), and self-attested in writing before April 1, 2013, to his or her character and fitness based upon his or her demonstrated work performance.
- (C) Certificates: The responsible party shall not reject a self-employed provider's application for ODA certification, revoke a self-employed provider's certification, reject a bid from a self-employed provider for an agreement, or terminate that agreement solely because the self-employed provider was convicted of, or pleaded guilty to, an offense listed in paragraph (A)(2), (A)(3), or (A)(4) of this rule if the self-employed provider was issued either a:
  - (1) Certificate of qualification for employment issued by a court of common pleas with competent jurisdiction pursuant to section 2953.25 of the Revised Code (A person may petition for a certificate of qualification for employment on "The Ohio Certificate of Qualification for Employment Online Petition Website" or <https://www.drccqe.com/>); or,
  - (2) Certificate of achievement and employability in a home and community-based service-related field, issued by the department of rehabilitation and corrections pursuant to section 2961.22 of the Revised Code.
- (D) Pardons: The responsible party shall not reject a self-employed provider's application for ODA certification, revoke a self-employed provider's certification, reject a bid

from a self-employed provider for an agreement, or terminate that agreement solely because the self-employed provider was convicted of, or pleaded guilty to, any offense listed or described in rule 173-9-06 of the Administrative Code under any of the following circumstances:

- (1) The self-employed provider was granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code;
- (2) The self-employed provider was granted an unconditional pardon for the offense pursuant to an existing or former law of this state, any other state, or the United States, if the law is substantially equivalent to Chapter 2967. of the Revised Code;
- (3) The conviction or guilty plea was set aside pursuant to law; or,
- (4) The self-employed provider was granted a conditional pardon for the offense pursuant to Chapter 2967. of the Revised Code, and the conditions under which the pardon was granted have been satisfied.

Effective: 11/1/2023

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

CERTIFIED ELECTRONICALLY

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Certification

09/29/2023

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Date

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