

173-9-07**Background checks for paid direct-care positions: occasions when a disqualifying offense does not disqualify.**

Introduction: When the responsible party is an agency provider, PACE organization, ODA, AAA, or PAA, in the case of its applicants, employees, and subcontracted self-employed providers, there are four possible ways to hire an applicant or subcontract with a self-employed provider, or retain an employee or subcontracted self-employed provider, if the applicant's, employee's, or subcontracted self-employed provider's criminal record contains a disqualifying offense: not being in a period of disqualification under paragraph (A) of this rule, being grandfathered under paragraph (B) of this rule, having a certificate under paragraph (C) of this rule, or being pardoned under paragraph (D) of this rule. If 42 C.F.R. 460.68(a) permanently disqualifies an applicant, employee, or self-employed provider from employment in, or subcontracting by, a PACE organization or a subcontractor of a PACE organization, this rule does not establish an occasion when the disqualifying offense under 42 C.F.R. 460.68(a) does not disqualify under the PACE program.

When the responsible party is a consumer in the case of an applicant to be, or an employee who is, the consumer's participant-directed provider, there are four possible ways to hire an applicant, or retain an employee, as the consumer's participant-directed provider: not being in a period of disqualification under paragraph (A) of this rule, being grandfathered under paragraph (B) of this rule, having a certificate under paragraph (C) of this rule, or being pardoned under paragraph (D) of this rule.

When the responsible party is ODA in the case of a self-employed provider's application to become an ODA-certified non-agency provider under Chapter 173-39 of the Administrative Code and in the case of an ODA-certified non-agency provider, the responsible party shall not reject a self-employed provider's application for ODA certification or revoke a self-employed provider's certification solely because the self-employed provider has a disqualifying offense on his or her criminal record in the following four situations: the self-employed provider is not in a period of disqualification under paragraph (A) of this rule, being grandfathered under paragraph (B) of this rule, having a certificate under paragraph (C) of this rule, or being pardoned under paragraph (D) of this rule.

When the responsible party is an AAA in the case of a self-employed provider who bids for an AAA-provider agreement or is in an existing AAA-provider agreement, the responsible party shall not reject a bid from a self-employed provider for an AAA-provider agreement (agreement) or to terminate an existing agreement solely because the self-employed provider has a disqualifying offense on the self-employed provider's criminal record in the following four situations: the self-employed provider is not in a period of disqualification under paragraph (A) of this rule, being grandfathered under paragraph (B) of this rule, having a certificate under paragraph (C) of this rule, or being pardoned under paragraph (D) of this rule.

(A) Periods of disqualification:

(1) Tier I: permanent disqualification: An applicant, employee, or self-employed provider is in a permanent period of disqualification if the applicant, employee, or self-employed provider was convicted of, pleaded guilty to, or has been found eligible for intervention in lieu of conviction to, an offense in any of the following sections of the Revised Code or an offense of any existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent 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 (knowingly or recklessly failing to provide for a functionally-impaired person).

(g) 2903.34 (patient abuse, gross patient abuse, patient neglect).

(h) 2903.341 (patient endangerment).

(i) 2905.01 (kidnapping).

(j) 2905.02 (abduction).

(k) 2905.32 (trafficking in persons)

(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 or impaired person).
- (x) 2907.322 (pandering sexually-oriented matter involving a minor or impaired person).
- (y) 2907.323 (illegal use of a minor or impaired person in a nudity-oriented material or performance).
- (z) 2909.22 (soliciting or providing support for an act of terrorism).
- (aa) 2909.23 (making a terroristic threat).
- (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) Any other section of the Revised Code related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct involving a federal or state-funded program other than section 2913.46 of the Revised Code (illegal use of SNAP or WIC program benefits).

(2) Tier II: ten-year period of disqualification:

- (a) An applicant, employee, or self-employed provider is subject to a ten-year period of disqualification which ends ten years after the date the applicant, employee, or self-employed provider was fully discharged from all imprisonment, probation, or parole if the applicant, employee, or self-employed provider was convicted of, pleaded guilty to, or has been found eligible for intervention in lieu of conviction to, an offense in any of the following sections of the Revised Code or an offense of any existing or former municipal ordinance or law of this state, any other state, or the

United States that is substantially equivalent 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 (enticing or soliciting another person to patronize a prostitute; procurement of a prostitute for another person to patronize).
- (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 of a deadly weapon into a courthouse, 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, a school safety zone, or with the intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function).
- (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 (aggravated trafficking in drugs, trafficking in drugs, trafficking in marihuana [marijuana], trafficking in cocaine, trafficking in LSD, trafficking in heroin, trafficking in hashish, trafficking in a controlled substance analog, trafficking in a fentanyl-related compound).
- (xxviii) 2925.04 (illegal manufacture of drugs, illegal 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).
- (b) An applicant, employee, or self-employed provider is subject to a fifteen-year period of disqualification (which ends fifteen years after the date the applicant, employee, or self-employed provider was fully discharged from all imprisonment, probation, or parole) if the applicant, employee, or self-employed provider was convicted of multiple disqualifying offenses.

including an offense listed under paragraph (A)(2)(a) of this rule, and another offense or offenses listed under 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 period of disqualification:

(a) An applicant, employee, or self-employed provider is subject to a seven-year period of disqualification which ends seven years after the date of full discharge from all imprisonment, probation, or parole if the applicant, employee, or self-employed provider was convicted of, pleaded guilty to, or has been found eligible for intervention in lieu of conviction to an offense in any of the following sections of the Revised Code or an offense of any existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent 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, trespass in a habitation when a person is present or likely to be present).

(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, falsification regarding a removal proceeding).

(xix) 2921.34 (escape).

(xx) 2921.35 (aiding escape or resistance to lawful authority).

(xxi) 2921.36 (illegal conveyance of weapons, drugs, intoxicating liquor, or a communications device onto the grounds of a specified government facility, illegal conveyance of cash onto the grounds of a detention facility).

(xxii) 2925.05 (aggravated funding of drug or marihuana [marijuana] trafficking, drug or marihuana [marijuana] trafficking).

(xxiii) 2925.06 (illegal administration of 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).

(b) An applicant, employee, or self-employed provider is subject to a ten-year period of disqualification (which ends ten years after the date of full discharge from all imprisonment, probation, or parole) if the applicant, employee, or self-employed provider was convicted of multiple disqualifying offenses, including an offense listed under paragraph (A)(3)(a) of this rule, and another offense or offenses listed under 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 period of disqualification:

(a) An applicant, employee, or self-employed provider is subject to a five-year period of disqualification which ends five years after the date of full discharge from all imprisonment, probation, or parole if the applicant, employee, or self-employed provider was convicted of, pleaded guilty to, or has been found eligible for intervention in lieu of conviction to, an offense in any of the following sections of the Revised Code or an offense of any existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent 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, engaging in prostitution after a positive HIV test).

(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 property; unauthorized use of computer, cable, or telecommunication property; unauthorized use of the law enforcement automated database system; unauthorized use of the Ohio law enforcement gateway).

(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 or selling or distributing forged 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 the emblem of a law enforcement agency or an organization of law enforcement officers).
- (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) 2919.124 (unlawful performance of a drug-induced abortion).
- (xxvii) 2919.23 (interference with custody).
- (xxviii) 2919.24 (contributing to the unruliness or delinquency of a child).
- (xxix) 2921.12 (tampering with evidence).
- (xxx) 2921.21 (compounding a crime).
- (xxxi) 2921.24 (disclosure of confidential information).
- (xxxii) 2921.32 (obstructing justice).
- (xxxiii) 2921.321 (assaulting or harassing a police dog or horse, assaulting or harassing an assistance dog).
- (xxxiv) 2921.51 (impersonation of peace officer, private police officer, federal law enforcement officer, or BCII investigator).
- (xxxv) 2925.09 (illegal administration, dispensing, distribution, manufacture, possession, selling, or using of any dangerous drug to or for livestock or any animal that is generally used for food or in

the production of food, unless the drug is prescribed by a licensed veterinarian).

(xxxvi) 2925.11 (aggravated possession of drugs, possession of drugs, possession of cocaine, possession of LSD, possession of heroin, possession of hashish, possession of a controlled substance analog, possession of marihuana, [marijuana] possession of a fentanyl-related compound), unless a minor drug possession offense.

(xxxvii) 2925.13 (permitting drug abuse).

(xxxviii) 2925.22 (deception to obtain a dangerous drug).

(xxxix) 2925.23 (illegal processing of drug documents).

(xl) 2925.36 (illegal dispensing of drug samples).

(xli) 2925.55 (unlawful purchase of a pseudoephedrine product or ephedrine product, underage purchase of a pseudoephedrine product or ephedrine product, using false information to purchase a pseudoephedrine product or ephedrine product, improper purchase of a pseudoephedrine product or ephedrine product).

(xlii) 2925.56 (unlawfully selling a pseudoephedrine product or ephedrine product; unlawfully selling a pseudoephedrine product or ephedrine product to a minor; improper sale of a pseudoephedrine product or ephedrine product).

(xliii) If related to another offense under paragraph (A)(4)(a) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity).

(b) An applicant, employee, or self-employed provider is subject to a seven-year period of disqualification beginning on the date of full discharge from all imprisonment, probation, or parole if the applicant, employee, or self-employed provider was convicted of multiple disqualifying offenses listed under 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 period of disqualification: An applicant, employee, or self-employed provider is subject to no period of disqualification if the applicant, employee, or self-employed provider was convicted of, pleaded guilty to, or has been found eligible for intervention in lieu of conviction to, an offense in any of the following sections of the Revised Code or an offense of any existing or former municipal ordinance or law of this state, any other state, or the United States

that is substantially equivalent 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 to a juvenile, or advertising of drug paraphernalia).

(B) Grandfathered: For the purposes of this rule, an employee or subcontracted self-employed provider is grandfathered if the employee or self-employed provider would otherwise have been disqualified from a paid direct-care position because the employee or self-employed provider was convicted of, pleaded guilty to, or has been found eligible for intervention in lieu of conviction to, an offense(s) listed under paragraph (A)(4) of this rule, but only if all of the following have occurred:

(1) The responsible party hired the employee before January 1, 2013.

(2) The employee's conviction or guilty plea occurred before January 1, 2013.

(3) The responsible party considered the nature and seriousness of the offense(s), and attested in writing before April 1, 2013, to the character and fitness of the employee based upon the employee's demonstrated work performance.

(C) Certified: For the purposes of this rule, an applicant, employee, or subcontracted self-employed provider is certified if applicant's, employee's, or subcontracted self-employed provider's conviction of, plea of guilty to, or eligibility for intervention in lieu of conviction to, a disqualifying offense is not one of the disqualifying offenses listed under paragraph (A)(1) of this rule and if the applicant, employee, or subcontracted self-employed provider was issued either of the following:

(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/>).

(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) Pardoned: An applicant, employee, or self-employed provider is pardoned from any disqualifying offense listed or described in rule 173-9-06 of the Administrative Code under any of the following circumstances:

- (1) The applicant or employee was granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code.
- (2) The applicant or employee 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.
- (4) The applicant or employee 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.

Replaces: 173-9-07, 173-9-07.1

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under: 119.03

Statutory Authority: 121.07, 173.01, 173.02, 173.38, 173.381, 173.391, 173.392; 42 U.S.C. 3025; 45 C.F.R. 1321.11

Rule Amplifies: 173.38, 173.381; 42 C.F.R. 460.68, 460.71

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