

173-9-08

Records: confidentiality and retention.

(A) Confidentiality: Criminal records are not public records. The responsible party shall only make criminal records available to the following people:

(1) For ombudsman positions:

- (a) The applicant or employee who is the subject of the criminal records check or the applicant's or employee's representative.
- (b) The responsible party or the responsible party's designee.
- (c) The state long-term care ombudsman or a representative of the office of the state long-term care ombudsman program who is responsible for monitoring the regional program's compliance.
- (d) A court, hearing officer, or other necessary individual involved in a case dealing with any of the following:
 - (i) A denial of employment of the applicant or employee.
 - (ii) Employment or unemployment benefits of the applicant or employee.
 - (iii) A civil or criminal action regarding the medicaid program or an ODA-administered program.

(2) For direct-care positions:

- (a) The applicant, ~~or employee, or self-employed provider~~ who is the subject of the criminal records check or the applicant's, ~~or employee's, or self-employed provider's~~ representative.
- (b) The responsible party that conducted the criminal records check or the responsible party's representative.
- (c) The administrator of any other facility, agency, or program that employs direct-care positions that is owned or operated by the same party that owns or operates the responsible party that conducted the criminal records check.
- (d) The employment service that conducted the criminal records check, if an

employment service conducted the criminal records check.

- (e) ODA's director and any person that the director authorizes to monitor responsible parties' compliance with Chapter 173-9 of the Administrative Code.
- (f) The director of the Ohio department of medicaid and staff of the department of medicaid who are involved in the administration of the medicaid program in ~~either~~ any of the following ~~two~~ three situations:
 - (i) A responsible party that is also a waiver agency conducted a criminal records check on an applicant or employee.
 - (ii) An employment service conducted a criminal records check on an applicant or employee that it referred to a responsible party that is also a waiver agency.
 - (iii) A consumer, acting as the responsible party, conducted a criminal records check on an applicant or employee for a consumer-directed or self-directed arrangement.
- (g) A court, hearing officer, or other necessary individual involved in a case dealing with any of the following three situations:
 - (i) A denial of employment of the applicant or employee.
 - (ii) Employment or unemployment benefits of the applicant or employee.
 - (iii) A civil or criminal action regarding the medicaid program or an ODA-administered program.

(B) Records retention:

(1) Personnel files:

- (a) What to retain: To verify compliance with Chapter 173-9 of the Administrative Code, for each applicant the responsible party hired, ~~or~~ each employee the responsible party retained, each self-employed applicant the responsible party certified, each self-employed person that retained certification, each self-employed bidder for a provider

agreement, or each self-employed person presently under a provider agreement, the responsible party shall retain electronic or paper copies of the following records:

- (i) The result of each of the database reviews.
 - (ii) Any criminal records including reverified records.
 - (iii) The written attestation to the character and fitness of the employee, if the responsible party completed a written attestation before April 1, 2013 to comply with paragraph (B)(3) of rule 173-9-07 of the Administrative Code, or the written attestation to the character and fitness of the self-employed provider, if the self-employed provider completed a written attestation before April 1, 2013 to comply with paragraph (B)(3) of rule 173-9-07.1 of the Administrative Code.
 - (iv) A certificate of qualification for employment, if a court issued a certificate of qualification for employment to the employee.
 - (v) A certificate of achievement and employability, if the department of rehabilitation and corrections issued a certificate of achievement and employability to the employee.
 - (vi) A pardon, if a governor pardoned the employee.
 - (vii) The date the responsible party hired the employee. ~~If the responsible party is a non-agency provider, the provider~~ Regarding a self-employed person, the responsible party shall retain the date that he or she it was certified by ODA the self-employed person or entered into a provider agreement with the self-employed person. ~~If the responsible party is a self-employed provider, the provider shall retain the date that he or she entered into a provider agreement with ODA (or ODA's designee).~~
- (b) Sealed files: To comply with paragraph (A) of this rule, the responsible party shall retain the records that paragraph (B)(1) of this rule requires the responsible party to retain by sealing the records within the each applicant's or each employee's personnel files or by retaining the records in separate files from the personnel files. ~~If the responsible party is a non-agency or~~ Regarding a self-employed provider person,

the responsible party shall simply retain the records.

(c) Retention period:

- (i) The responsible party that is an ODA-certified provider shall retain records and make them available for monitoring purposes according to the timelines and other terms that ~~paragraph (A)(5), (B)(5), (C)(5), (D)(5), or (F)(5) of rule 173-39-02 of the Administrative Code established.~~
- (ii) The responsible party that is a non-certified provider shall retain records and make them available for monitoring purposes according to the timelines and other terms that ~~paragraph (A)(20) of rule 173-3-06 of the Administrative Code established.~~

(2) Roster:

- (a) A responsible party, ~~other than a non-agency provider,~~ shall maintain a roster of applicants and employees, accessible by ODA's director (or the director's designees), that includes, but is not limited to:
 - (i) The name of each applicant and employee.
 - (ii) The date the applicant or employee started to work for the responsible party.
 - (iii) The date the responsible party requested criminal records from BCII.
 - (iv) The date the responsible party obtained criminal records from BCII.
 - (v) A determination of whether the criminal records revealed that the applicant or employee committed a disqualifying offense(s).
- (b) ~~A responsible party that is a non-agency provider~~ Regarding the self-employed, the responsible party shall retain the following information, accessible by ODA's director (or the director's designees), that includes, but is not limited to:
 - (i) The date that ODA certified the ~~responsible party~~ self-employed provider.

- (ii) The date the responsible party requested criminal records from BCII.
- (iii) The date the responsible party obtained criminal records from BCII.
- (iv) A determination of whether the criminal records revealed that the ~~applicant or employee~~ self-employed provider committed a disqualifying offense(s).

Effective: 02/01/2015

Five Year Review (FYR) Dates: 10/30/2014 and 02/01/2020

CERTIFIED ELECTRONICALLY

Certification

01/05/2015

Date

Promulgated Under: 119.03
Statutory Authority: 173.01, 173.02, 173.27, 173.38, 173.381, 173.391, 173.392; Sections 305(a)(1)(C) and 712(a)(5)(D) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended in 2006; 45 C.F.R. 1321.11 (October 1, 2014 edition)

Rule Amplifies: 173.27, 173.38, 173.381; 42 C.F.R. 460.68(a), 460.71(a)(1), 460.71(a)(2), 460.200 (October 1, 2014 edition)

Prior Effective Dates: 173-9-08: 01/01/2013, 04/01/2014. 173-9-01: 03/04/1997 (Emer.), 07/31/1997, 04/17/2003, 01/01/2008, 02/15/2009, 08/11/2011. 173-14-14: 07/11/1991, 12/27/2001, 12/28/2006, 02/15/2009