

TO BE RESCINDED

173-9-08

**Background checks for paid direct-care positions:
confidentiality and retention of records.**

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

- (1) The applicant, employee, or self-employed provider who is the subject of the criminal records check or the applicant's, employee's, or self-employed provider's representative.
- (2) The responsible party that conducted the criminal records check or the responsible party's representative.
- (3) 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.
- (4) The employment service that conducted the criminal records check, if an employment service conducted the criminal records check.
- (5) ODA's director and any person that the director authorizes to monitor responsible parties' compliance with Chapter 173-9 of the Administrative Code.
- (6) 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 any of the following three situations:
 - (a) A responsible party that is also a waiver agency conducted a criminal records check on an applicant or employee.
 - (b) 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.
 - (c) A consumer or individual, acting as the responsible party, conducted a criminal records check on an applicant or employee for a participant-directed or self-directed arrangement.
- (7) A court, hearing officer, or other necessary individual involved in a case dealing with any of the following three situations:
 - (a) A denial of employment of the applicant or employee.

(b) Employment or unemployment benefits of the applicant or employee.

(c) 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, 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 an AAA-provider agreement (agreement), or each self-employed person presently under an 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. Regarding a self-employed person, the responsible party shall retain the date that it certified the self-employed person or entered into an agreement with the self-employed person.

(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. Regarding a self-employed 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 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 rule 173-3-06 of the Administrative Code established.

(2) Roster:

(a) A responsible party 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 responsible party hired the employee.
- (iii) The date the responsible party requested criminal records from BCII.
- (iv) The date the responsible party received criminal records from BCII.
- (v) A determination of whether the criminal records revealed that the applicant or employee committed a disqualifying offense(s).

(b) 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 self-employed provider.
- (ii) The date the responsible party requested criminal records from BCII.

- (iii) The date the responsible party received criminal records from BCII.
- (iv) A determination of whether the criminal records revealed that the self-employed provider committed a disqualifying offense(s).

Effective: 11/1/2023

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

CERTIFIED ELECTRONICALLY

Certification

09/29/2023

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, 460.200
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