

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 may make criminal records available only to the people or entities listed under division (I) of section 173.38 of the Revised Code or division (G) of section 173.381 of the Revised Code.

(B) Records retention:

(1) Personnel files:

(a) What to retain: To verify compliance with this chapter, the responsible party shall retain the following records:

(i) The result of each of the database reviews.

(ii) Any criminal records including reverified records.

(iii) The attestation to the character and fitness of the employee, if the responsible party completed an attestation before April 1, 2013 to comply with paragraph (B)(3) of rule 173-9-07 of the Administrative Code, or the attestation to the character and fitness of the self-employed provider, if the self-employed provider completed an attestation before April 1, 2013 to comply with paragraph (B)(3) of rule 173-9-07.1 of the Administrative Code as that rule existed before its rescission.

(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: The responsible party shall retain the records listed under paragraph (B)(1)(a) of this rule 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 may simply retain the records.

- (c) Retention period: 2 C.F.R. 200.334, 42 C.F.R. 441.352 and 460.200, 45 C.F.R. 75.361, and rules 173-3-06 and 173-39-02 of the Administrative Code (as applicable) establish timelines and other requirements for the responsible party to retain the records required under paragraph (B)(1)(a) of this rule.

(2) Roster for criminal records requested from the FBI:

- (a) A responsible party shall maintain a roster of applicants and employees for whom section 173.38 of the Revised Code requires obtaining criminal records from the FBI through BCII, 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 the FBI through BCII.

(iv) The date the responsible party received criminal records from the FBI through 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, if section 173.381 of the Revised Code requires obtaining criminal records from the FBI through BCII, then 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 ODA certified the self-employed provider or the date the AAA entered into an AAA-provider agreement with the self-employed provider.

(ii) The date the responsible party requested criminal records from the FBI through BCII.

(iii) The date the responsible party received criminal records from the FBI through BCII.

(iv) A determination of whether the criminal records revealed the self-employed provider committed a disqualifying offense(s).

Replaces: 173-9-08

Effective:

Five Year Review (FYR) Dates:

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Certification

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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

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