

## TO BE RESCINDED

173-9-08

**Records.**

(A) Confidentiality: Pursuant to division (G) of section 173.27 of the Revised Code and division (I) of section 173.394 of the Revised Code, a criminal records check report is not a public record for the purposes of section 149.43 of the Revised Code and the responsible entity shall not make a report available to any person other than the following:

(1) For ombudsman services:

- (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 entity or the responsible entity's representative;
- (c) A representative of the office of the state long-term care ombudsman program who is responsible for monitoring the regional program's compliance with this section, if the state long-term care ombudsman designates the head or other employee of a regional long-term care ombudsman program to request a criminal records check;
- (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 a program ODA administers.

(2) For direct-care services:

- (a) The applicant or employee who is the subject of the criminal records check or the applicant's or employee's representative;
- (b) The chief administrator of the responsible entity requesting the criminal records check or the administrator's representative;

- (c) The administrator of any other facility, agency, or program that provides direct care to individuals that is owned or operated by the same entity that owns or operates the responsible entity that requested the criminal records check;
- (d) The employment service that requested the criminal records check;
- (e) ODA's director or a person that ODA's director authorizes to monitor the responsible entity's compliance with Chapter 173-9 of the Administrative Code;
- (f) The director of job and family services and the staff of the department of job and family services who are involved in the administration of the medicaid program if any of the following apply;
  - (i) In the case of a criminal records check requested by a responsible entity, the responsible entity is also a waiver agency; or,
  - (ii) In the case of a criminal records check requested by an employment service, the employment service makes the request for an applicant or employee that the employment service refers to a responsible entity that is also a waiver agency.
- (g) 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 a program ODA administers.

(B) Records retention:

(1) Personnel files:

- (a) What to retain: To document compliance with Chapter 173-9 of the Administrative Code, for each employee, the responsible entity shall

retain the following records:

- (i) A copy of the result of each free database review required under rule 173-9-03 of the Administrative Code.
  - (ii) The original copy of any criminal records report or the original copy of any reverified criminal records report.
  - (iii) A copy of the written attestation to the character and fitness of the employee, if the responsible entity completed a written attestation to comply with paragraph (B)(3) of rule 173-9-07 of the Administrative Code.
  - (iv) An official copy of a certificate of qualification for employment, if a court issued a certificate of qualification to the employee.
  - (v) An official copy of a certificate of achievement and employability, if the the department of rehabilitation and corrections issued a certificate of achievement and employability to the employee.
  - (vi) An official copy of a pardon, if a governor pardoned the employee.
  - (vii) The date the responsible entity hired each employee. If the responsible entity is a non-agency provider of direct-care services, the provider shall retain the date that he or she was certified by ODA. If the responsible entity 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 entity shall retain the records required under paragraph (B)(1) of this rule by sealing them within the personnel files or by retaining them in separate files from the personnel files. If the responsible entity is a non-agency provider, the responsible entity shall simply retain the records required under paragraph (B)(1) of this rule.
- (c) Retain how long?:
- (i) The responsible entity that is an ODA-certified provider of direct-care services shall retain records and make them available for monitoring purposes according to the timelines and other terms established under paragraph (A)(5), (B)(5), (C)(5), (D)(5),

(E)(5), or (F)(5) of rule 173-39-02 of the Administrative Code.

- (ii) The responsible entity that is a non-certified provider of direct-care services shall retain records and make them available for monitoring purposes according to the timelines and other terms established under paragraph (A)(20) of rule 173-3-06 of the Administrative Code.

(2) Roster:

- (a) A responsible entity, other than a non-agency provider, shall maintain a roster of applicants and employees, accessible by the director, 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 entity.
  - (iii) The date the criminal records check request was submitted to BCII.
  - (iv) The date the criminal records check was received.
  - (v) A determination of whether the results of the check revealed that the applicant or employee committed a disqualifying offense(s).
- (b) A responsible entity that is a non-agency provider shall maintain the following information, accessible by the director, that includes, but is not limited to:
  - (i) The date the provider was certified by ODA.
  - (ii) The date the criminal records check request was submitted to BCII.
  - (iii) The date the criminal records check was received.
  - (iv) A determination of whether the results of the check revealed that the applicant or employee committed a disqualifying offense(s).

Replaces: 173-9-08  
Effective:  
R.C. 119.032 review dates: 01/14/2014

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Certification

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Date

Promulgated Under: 119.03  
Statutory Authority: 173.01, 173.02, 173.27, 173.38, 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 (10-01-2013  
edition).  
Rule Amplifies: 173.27, 173.38; 42 C.F.R. 460.68(a), 460.71(a)(1),  
460.71(a)(2), 460.200 (10-01-2013 edition).  
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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.