

173-9-09

**Background checks: paid direct-care positions: Immunity from negligent hiring, certification, or AAA-provider agreements.**

(A) In a tort or other civil action for damages that is brought as the result of an injury, death, or loss to person or property caused by an applicant or employee, all of the following apply:

- (1) If the responsible party hired the applicant or retained the employee in good faith and reasonable reliance upon the applicant's or employee's criminal record, the responsible party shall not be found negligent solely because of its reliance on the criminal record, even if the criminal record is later determined to have been incomplete or inaccurate.
- (2) If the responsible party conditionally hired the applicant in good faith and in a ~~manner that complied~~ compliance with rule 173-9-05 of the Administrative Code, the responsible party shall not be found negligent solely because it hired the applicant before receiving the applicant's criminal record.
- (3) If the responsible party in good faith hired the applicant or retained the employee because ~~the applicant or employee met the standards in~~ rule 173-9-07 of the Administrative Code ~~that allow a~~ allowed the responsible party to hire an applicant or retain an employee with a disqualifying offense on his or her criminal record, the responsible party shall not be negligent solely because the applicant or employee has been convicted of, or pleaded guilty to, a disqualifying offense.

(B) In a tort or other civil action for damages that is brought as the result of an injury, death, or loss to person or property caused by a self-employed provider, both of the following apply:

- (1) If the responsible party certified or entered into a ~~an~~ AAA-provider agreement (agreement) with the self-employed provider, or did not revoke or terminate the person's certification or ~~provider~~ agreement, in good faith and reasonable reliance upon the person's criminal record, the responsible party shall not be found negligent solely because of its reliance on the criminal record, even if the criminal record is later determined to have been incomplete or inaccurate.
- (2) If the responsible party in good faith certified or entered into a ~~provider~~ an agreement with the self-employed provider, or did not revoke or terminate the self-employed provider's certification or ~~provider~~ agreement, because the person met the standards in rule 173-9-07.1 of the Administrative Code that allow a responsible party to certify or enter into a ~~provider~~ an agreement with a self-employed provider who has a disqualifying offense on his or her criminal record, the responsible party shall not be negligent solely because

the self-employed provider has been convicted of, or pleaded guilty to, a disqualifying offense.

Effective:

Five Year Review (FYR) Dates: 05/04/2017

---

Certification

---

Date

Promulgated Under: 119.03  
Statutory Authority: 173.01, 173.02, 173.38, 173.381, 173.391, 173.392;  
Sections 305(a)(1)(C) of the Older Americans Act of 1965, 79 Stat. 210, 42 U.S.C. 3001, as amended by the Older Americans Act Reauthorization Act of 2016; 45 C.F.R. 1321.11 (October, 2016 edition).  
Rule Amplifies: 173.38, 173.381; 42 C.F.R. 460.68(a), 460.71(b)(1), 460.71(b)(2) (November 15, 2016).  
Prior Effective Dates: 173-41-01: 03/04/1997 (Emer.), 07/31/1997, 04/17/2003, 01/01/2008. 173-9-01: 02/15/2009, 08/11/2011. 173-9-09: 01/01/2013, 04/01/2014, 02/01/2015.