

## TO BE RESCINDED

5101:3-45-08

**ODJFS-administered waiver program: Criminal records checks involving non-agency providers.**

(A) This rule sets forth the process and requirements for the criminal records checks of non-agency providers of home and community-based services (HCBS) in an ODJFS-administered waiver.

(B) For the purposes of this rule,

(1) "Anniversary date" means the later of the effective date of the provider agreement relating to the independent provider or sixty days after the effective date of section 5111.034 of the Revised Code (September 26, 2003).

(2) "Criminal records check" means any criminal records check conducted by the superintendent of the bureau of criminal identification and investigation (BCII) in accordance with section 109.572 of the Revised Code.

(3) "Department" means the Ohio department of job and family services (ODJFS) or its designee.

(4) "Disqualifying offense" means any of the following:

(a) A violation of section 959.13, 2903.01, 2903.02, 2903.03, 2903.04, 2903.041, 2903.11, 2903.12, 2903.13, 2903.15, 2903.16, 2903.21, 2903.211, 2903.22, 2903.34, 2905.01, 2905.02, 2905.05, 2905.11, 2905.12, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.24, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2909.02, 2909.03, 2909.04, 2909.05, 2909.22, 2909.23, 2909.24, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.05, 2913.11, 2913.21, 2913.31, 2913.32, 2913.40, 2913.41, 2913.42, 2913.43, 2913.44, 2913.441, 2913.45, 2913.46, 2913.47, 2913.48, 2913.49, 2913.51, 2917.01, 2917.02, 2917.03, 2917.11, 2917.31, 2919.12, 2919.22, 2919.23, 2919.24, 2919.25, 2921.03, 2921.11, 2921.13, 2921.34, 2921.35, 2921.36, 2923.01, 2923.02, 2923.03, 2923.12, 2923.13, 2923.161, 2923.32, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.14, 2925.22, 2925.23, 2927.12 or 3716.11 of the Revised Code, felonious sexual penetration in violation of former section 2907.12 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it

existed prior to July 1, 1996, had the violation been committed prior to that date; or

- (b) A violation of an existing or former municipal ordinance or law of the state of Ohio, any other state, or the United States that is substantially equivalent to any of the disqualifying offenses set forth in paragraph (B)(4)(a) of this rule.
- (5) "Effective date of provider agreement" means the month in which the initial provider agreement was entered into between the department and the provider.
- (6) "Home and community-based services" (HCBS) refers to the services set forth in division (A)(4) of section 5111.033 of the Revised Code.
- (7) "Non-agency provider" means a person who is submitting an application for a provider agreement or who has a provider agreement as a non-agency provider of HCBS services in an ODJFS-administered waiver.
- (8) "Superintendent" means superintendent of BCII.

(C) Process for conducting criminal records checks.

- (1) The department shall inform:
  - (a) Each prospective non-agency provider, at the time of initial application for a medicaid provider agreement that involves providing waiver services to ODJFS-administered waiver consumers, that he or she must provide a set of fingerprint impressions, and a criminal records check must be conducted; and
  - (b) Each currently-enrolled non-agency provider, on or before the time of the anniversary date of their medicaid provider agreement that involves providing waiver services to ODJFS-administered waiver consumers, that he or she must provide a set of fingerprint impressions and that a criminal records check must be conducted.
- (2) The department shall require the non-agency provider to complete a criminal records check prior to entering into a medicaid provider agreement with the non-agency provider, and at least annually thereafter.

- (a) If a non-agency provider does not present proof of having been a resident of the state of Ohio for the five-year period immediately prior to the date the criminal records check is requested, or provide evidence that within that five-year period the superintendent has requested information about the non-agency provider from the federal bureau of investigation (FBI), the department shall request that the superintendent obtain a criminal records check from the FBI.
  - (b) Even if a non-agency provider presents proof of having been a resident of the state of Ohio for the five-year period, the department may request that the superintendent obtain information from the FBI in the criminal records check.
- (3) The department shall provide the following to each non-agency provider for whom a criminal records check request is required by this rule:
  - (a) Information about accessing, completing and forwarding to the superintendent the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and the standard fingerprint impression sheet prescribed pursuant to division (C)(2) of that section; and
  - (b) Written notification that the non-agency provider is to instruct the superintendent to submit the completed report of the criminal records check directly to the department.
- (4) The non-agency provider shall pay BCII the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check conducted on his or her behalf pursuant to this rule.
- (5) A non-agency provider given information and notification pursuant to paragraph (C)(3) of this rule who fails to access, complete and forward to the superintendent the form, or the standard fingerprint impression sheet, or who fails to instruct the superintendent to submit the completed report of the criminal records check directly to the department, shall not be approved as a non-agency provider.
- (6) Except as provided by paragraph (D) of this rule, the department shall not issue a new provider agreement to, and shall terminate an existing provider agreement of a non-agency provider if he or she has been convicted of, pleaded guilty to, or has been found eligible for intervention in lieu of conviction for any of the disqualifying offenses set forth in paragraph (B)(4)

of this rule, regardless of the date of the conviction, the date of entry of the guilty plea, or the date the person was found eligible for intervention in lieu of conviction. If the department determines that two or more convictions or guilty pleas result from or are connected with the same act or result from offenses committed at the same time, they shall be counted as one conviction or guilty plea.

- (7) Reports of any criminal records checks conducted by BCII in accordance with this rule are not public records for the purposes of section 149.43 of the Revised Code and shall not be made available to any person other than the following:
- (a) The non-agency provider who is the subject of the criminal records check or the non-agency provider's representative;
  - (b) An administrator at the department who is requesting the criminal records check or the administrator's representative; and
  - (c) A court, hearing officer or other necessary individual involved in a case dealing with a denial or termination of a medicaid provider agreement related to the criminal records check.
- (8) If the non-agency provider fails to submit a criminal records check within sixty days of notification, then the department or its designee shall immediately initiate steps to remove the non-agency provider from all all services plans until such time as the non-agency provider has satisfactorily completed all requirements of this rule.
- (9) If the non-agency provider continues to be noncompliant with the provisions of this rule, the department shall initiate termination of the medicaid provider agreement.
- (D) Conditions and factors used to evaluate an applicant's personal character.
- (1) A consumer may choose to receive waiver services from a non-agency provider who has been convicted of, pleaded guilty to, or has been granted treatment in lieu of conviction of only one of the disqualifying offenses set forth in paragraph (B)(4) of this rule if all of the conditions in paragraphs (D)(1)(a) to (D)(1)(j) of this rule are met.
    - (a) The disqualifying offense was not perpetrated against an individual under the age of eighteen or age sixty or older, or an individual of any age

with disabilities;

- (b) The non-agency provider is not a repeat violent offender;
  - (c) The disqualifying offense is not a sex offense as set forth in Chapter 2907. of the Revised Code;
  - (d) The disqualifying offense is not abuse or neglect as set forth in section 2903.34 of the Revised Code;
  - (e) The disqualifying offense is not aggravated murder as set forth in section 2903.01 of the Revised Code;
  - (f) The disqualifying offense is not murder as set forth in section 2903.02 of the Revised Code;
  - (g) The disqualifying offense is not voluntary manslaughter as set forth in section 2903.03 of the Revised Code;
  - (h) The disqualifying offense is disorderly conduct, and the conviction was not based upon an original complaint or indictment involving one of the violent offenses set forth in paragraph (B) (4) of this rule;
  - (i) Five years have passed since the non-agency provider was convicted, pleaded guilty or was fully discharged from imprisonment, probation and/or parole and treatment in lieu of conviction, whichever occurs last, for the disqualifying offense, and the disqualifying offense was not related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct involving a federal or state-funded program; and
  - (j) The non-agency provider agrees, in writing, to inform each potential consumer of the disqualifying offense prior to commencing service delivery.
- (2) Before choosing to receive waiver services from a non-agency provider who meets the conditions set forth in paragraph (D)(1) of this rule, the consumer shall consider all of the following additional factors to determine whether or not it is likely that the non-agency provider will commit another disqualifying offense:

- (a) The duties and responsibilities of the position, and the extent to which the position being filled provides an opportunity for the commission of the same or similar offenses;
- (b) The extenuating circumstances under which the offense was committed, including but not limited to:
  - (i) The non-agency provider's age at the time of the offense, and
  - (ii) The age and ability of the victim;
- (c) The amount of time that has lapsed since the non-agency provider was fully discharged from imprisonment, probation and/or parole;
- (d) Whether the non-agency provider has made efforts at rehabilitation, and the results of those efforts;
- (e) Whether any criminal proceedings are pending against the non-agency provider;
- (f) A conviction listed on the report of the criminal records check that identifies any offenses contained in the Revised Code that are not set forth in paragraph (B)(4) of this rule, if the crime bears a direct and substantial relationship to the duties and responsibilities of the position being filled; and
- (g) Any other factors that are relevant to the performance of the job duties.

(E) Pardons.

A conviction of, or a plea of guilty to, an offense as set forth in paragraph (B) (4) of this rule shall not prevent a consumer from choosing to receive services from a non-agency provider if any of the following circumstances apply:

- (1) The non-agency provider has been granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code;
- (2) The non-agency provider has been granted an unconditional pardon for the offense pursuant to an existing or former law of the state of Ohio, any other state, or the United States, if the law is substantially equivalent to Chapter 2967. of the Revised Code;

- (3) The non-agency provider has been granted a conditional pardon for the offense pursuant to Chapter 2967. of the Revised Code, and the condition(s) under which the pardon was granted have been satisfied; or
  
- (4) The conviction or guilty plea has been set aside pursuant to law.

Effective: 01/01/2013

R.C. 119.032 review dates: 10/16/2012

CERTIFIED ELECTRONICALLY

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Certification

12/21/2012

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Date

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