

5101:3-45-11

Ohio home care waiver, transitions DD waiver and transitions carve-out waiver programs: Exclusionary Periods for Disqualifying Offenses; Certificates; and Pardons.

(A) Except as set forth in paragraph (H) of this rule, a waiver agency may employ an applicant or continue to employ an employee who has been convicted of or pleaded guilty to an offense listed in paragraph (B)(6) of rule 5101:3-45-07 of the Administrative Code in a position involving providing home and community-based services (HCBS) to a consumer enrolled on the Ohio home care waiver, transitions DD waiver or transitions carve-out waiver pursuant to the timeframes set forth in this rule.

(B) Except as set forth in paragraph (H) of this rule, an applicant or independent provider who has been convicted of or pleaded guilty to an offense listed in paragraph (B)(5) of rule 5101:3-45-08 of the Administrative Code may be selected by a consumer enrolled on the Ohio home care waiver, transitions DD waiver or transitions carve-out waiver to provide them with HCBS pursuant to the timeframes set forth in this rule.

(C) Tier I. Permanent exclusion.

(1) No waiver agency shall employ an applicant or continue to employ an employee in a position that involves providing HCBS to a consumer, nor shall an independent provider provide HCBS to a consumer, if the applicant, employee or independent provider has been convicted of or pleaded guilty to, an offense in any of the following sections of the Revised Code:

(a) 2903.01 (aggravated murder);

(b) 2903.02 (murder);

(c) 2903.03 (voluntary manslaughter);

(d) 2903.11 (felonious assault);

(e) 2903.15 (permitting child abuse);

(f) 2903.16 (failing to provide for a functionally-impaired person);

(g) 2903.34 (patient abuse or neglect);

(h) 2903.341 (patient endangerment);

(i) 2905.01 (kidnapping);

(j) 2905.02 (abduction);

(k) 2905.32 (human trafficking);

- (l) 2905.33 (unlawful conduct with respect to documents);
 - (m) 2907.02 (rape);
 - (n) 2907.03 (sexual battery);
 - (o) 2907.04 (unlawful sexual conduct with a minor, formerly corruption of a minor);
 - (p) 2907.05 (gross sexual imposition);
 - (q) 2907.06 (sexual imposition);
 - (r) 2907.07 (importuning);
 - (s) 2907.08 (voyeurism);
 - (t) 2907.12 (felonious sexual penetration, as that offense existed prior to September 3, 1996);
 - (u) 2907.31 (disseminating matter harmful to juveniles);
 - (v) 2907.32 (pandering obscenity);
 - (w) 2907.321 (pandering obscenity involving a minor);
 - (x) 2907.322 (pandering sexually-oriented matter involving a minor);
 - (y) 2907.323 (illegal use of a minor in nudity-oriented material or performance);
 - (z) 2909.22 (soliciting or providing support for act of terrorism);
 - (aa) 2909.23 (making terroristic threats);
 - (bb) 2909.24 (terrorism);
 - (cc) 2913.40 (medicaid fraud);
 - (dd) If related to another offense under paragraph (C)(1) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or
- (2) A conviction related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct involving a federal or state-funded program, excluding the disqualifying offenses set forth in section 2913.46 (illegal use of supplemental nutrition assistance program (SNAP) or women, infants, and children (WIC) program benefits) and paragraph

(D)(1)(m) of this rule; or.

(3) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described in paragraphs (B)(1) or (B)(2) of this rule.

(D) Tier II. Ten-year exclusionary period.

(1) No waiver agency shall employ an applicant or continue to employ an employee in a position that involves providing HCBS to a consumer, nor shall an independent provider provide HCBS to a consumer, for a period of ten years from the date the applicant, employee or independent provider was fully discharged from all imprisonment, probation or parole, if the applicant, employee or independent provider has been convicted of or pleaded guilty to, an offense in any of the following sections of the Revised Code:

(a) 2903.04 (involuntary manslaughter);

(b) 2903.041 (reckless homicide);

(c) 2905.04 (child stealing, as that offense existed prior to July 1, 1996);

(d) 2905.05 (child enticement);

(e) 2905.11 (extortion);

(f) 2907.21 (compelling prostitution);

(g) 2907.22 (promoting prostitution);

(h) 2907.23 (enticement or solicitation to patronize a prostitute; procurement of a prostitute for another);

(i) 2909.02 (aggravated arson);

(j) 2909.03 (arson);

(k) 2911.01 (aggravated robbery);

(l) 2911.11 (aggravated burglary);

(m) 2913.46 (illegal use of SNAP or WIC program benefits);

(n) 2913.48 (worker's compensation fraud);

(o) 2913.49 (identity fraud);

(p) 2917.02 (aggravated riot);

- (q) 2923.12 (carrying concealed weapons);
 - (r) 2923.122 (illegal conveyance or possession of deadly weapon or dangerous ordnance in a school safety zone, illegal possession of an object indistinguishable from a firearm in a school safety zone);
 - (s) 2923.123 (illegal conveyance, possession, or control of deadly weapon or ordnance into courthouse);
 - (t) 2923.13 (having weapons while under a disability);
 - (u) 2923.161 (improperly discharging a firearm at or into a habitation or school);
 - (v) 2923.162 (discharge of firearm on or near prohibited premises);
 - (w) 2923.21 (improperly furnishing firearms to minor);
 - (x) 2923.32 (engaging in a pattern of corrupt activity);
 - (y) 2923.42 (participating in a criminal gang);
 - (z) 2925.02 (corrupting another with drugs);
 - (aa) 2925.03 (trafficking in drugs);
 - (bb) 2925.04 (illegal manufacture of drugs or cultivation of marijuana);
 - (cc) 2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs);
 - (dd) 3716.11 (placing harmful or hazardous objects in food or confection); or
 - (ee) If related to an offense under paragraph (D)(1) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or
- (2) A violation of an existing or former municipal ordinance or law of this state, any other state or the United States that is substantially equivalent to any of the offenses or violations described under paragraph (D)(1) of this rule.
- (3) If an applicant, employee or independent provider has been convicted of multiple disqualifying offenses, including an offense listed in paragraphs (D)(1) or (D)(2) of this rule, and another offense or offenses listed in paragraphs (D)(1), (D)(2), (E)(1), (E)(2), (F)(1) or (F)(2) of this rule, the applicant, employee or independent provider is subject to a fifteen-year exclusionary period beginning on the date the applicant, employee or

independent provider was fully discharged from all imprisonment, probation or parole for the most recent offense.

(E) Tier III. Seven-year exclusionary period.

(1) No waiver agency shall employ an applicant or continue to employ an employee in a position that a involves providing HCBS to a consumer, nor shall an independent provider provide HCBS to a consumer, for a period of seven years from the date the applicant, employee or independent provider was fully discharged from all imprisonment, probation or parole, if the applicant, employee or independent provider has been convicted of or pleaded guilty to, an offense in any of the following sections of the Revised Code:

(a) 959.13 (cruelty to animals);

(b) 959.131 (prohibitions concerning companion animals);

(c) 2903.12 (aggravated assault);

(d) 2903.21 (aggravated menacing);

(e) 2903.211 (menacing by stalking);

(f) 2905.12 (coercion);

(g) 2909.04 (disrupting public services);

(h) 2911.02 (robbery);

(i) 2911.12 (burglary);

(j) 2913.47 (insurance fraud);

(k) 2917.01 (inciting to violence);

(l) 2917.03 (riot);

(m) 2917.31 (inducing panic);

(n) 2919.22 (endangering children);

(o) 2919.25 (domestic violence);

(p) 2921.03 (intimidation);

(q) 2921.11 (perjury);

(r) 2921.13 (falsification, falsification in a theft offense, falsification to

purchase a firearm, or falsification to obtain a concealed handgun license);

(s) 2921.34 (escape);

(t) 2921.35 (aiding escape or resistance to lawful authority);

(u) 2921.36 (illegal conveyance of weapons, drugs or other prohibited items onto the grounds of a detention facility or institution);

(v) 2925.05 (funding drug trafficking);

(w) 2925.06 (illegal administration or distribution of anabolic steroids);

(x) 2925.24 (tampering with drugs);

(y) 2927.12 (ethnic intimidation); or

(z) If related to an offense under paragraph (E)(1) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or

(2) A violation of an existing or former municipal ordinance or law of this state, any other state or the United States that is substantially equivalent to any of the offenses or violations described under paragraph (E)(1) of this rule.

(3) If an applicant, employee or independent provider has been convicted of multiple disqualifying offenses, including an offense listed in paragraphs (E)(1) or (E)(2) of this rule, and another offense or offenses listed in paragraphs (E)(1), (E)(2), (F)(1) or (F)(2) of this rule, the applicant, employee or independent provider is subject to a ten-year exclusionary period beginning on the date the applicant, employee or independent provider was fully discharged from all imprisonment, probation or parole for the most recent offense.

(F) Tier IV. Five-year exclusionary period.

(1) No waiver agency shall employ an applicant or continue to employ an employee in a position that involves providing HCBS to a consumer, nor shall an independent provider provide HCBS to a consumer, for a period of five years from the date the applicant, employee or independent provider was fully discharged from all imprisonment, probation or parole, if the applicant, employee or independent provider has been convicted of or pleaded guilty to, an offense in any of the following sections of the Revised Code:

(a) 2903.13 (assault);

(b) 2903.22 (menacing);

- (c) 2907.09 (public indecency);
- (d) 2907.24 (soliciting);
- (e) 2907.25 (prostitution);
- (f) 2907.33 (deception to obtain matter harmful to juveniles);
- (g) 2911.13 (breaking and entering);
- (h) 2913.02 (theft);
- (i) 2913.03 (unauthorized use of a vehicle);
- (j) 2913.04 (unauthorized use of computer, cable or telecommunication property);
- (k) 2913.05 (telecommunication fraud);
- (l) 2913.11 (passing bad checks);
- (m) 2913.21 (misuse of credit cards);
- (n) 2913.31 (forgery - forging identification cards or selling or distributing forged identification cards);
- (o) 2913.32 (criminal simulation);
- (p) 2913.41 (defrauding a rental agency or hostelry);
- (q) 2913.42 (tampering with records);
- (r) 2913.43 (securing writings by deception);
- (s) 2913.44 (personating an officer);
- (t) 2913.441 (unlawful display of law enforcement emblem);
- (u) 2913.45 (defrauding creditors);
- (v) 2913.51 (receiving stolen property);
- (w) 2919.12 (unlawful abortion);
- (x) 2919.121 (unlawful abortion upon minor);
- (y) 2919.123 (unlawful distribution of an abortion-inducing drug);

- (z) 2919.23 (interference with custody);
 - (aa) 2919.24 (contributing to the unruliness or delinquency of a child);
 - (bb) 2921.12 (tampering with evidence);
 - (cc) 2921.21 (compounding a crime);
 - (dd) 2921.24 (disclosure of confidential information);
 - (ee) 2921.32 (obstructing justice);
 - (ff) 2921.321 (assaulting or harassing a police dog, horse, or service animal);
 - (gg) 2921.51 (impersonation of peace officer);
 - (hh) 2925.09 (illegal administration, dispensing, distribution, manufacture, possession, selling, or using of any dangerous veterinary drug);
 - (ii) 2925.11 (drug possession, other than a minor drug possession offense);
 - (jj) 2925.13 (permitting drug abuse);
 - (kk) 2925.22 (deception to obtain a dangerous drug);
 - (ll) 2925.23 (illegal processing of drug documents);
 - (mm) 2925.36 (illegal dispensing of drug samples);
 - (nn) 2925.55 (unlawful purchase of pseudoephedrine product);
 - (oo) 2925.56 (unlawful sale of pseudoephedrine product);
 - (pp) If related to an offense under paragraph (F)(1) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or
- (2) A violation of an existing or former municipal ordinance or law of this state, any other state or the United States that is substantially equivalent to any of the offenses or violations described under paragraph (F)(1) of this rule.
- (3) If an applicant, employee or independent provider has been convicted of multiple disqualifying offenses listed in paragraphs (F)(1) or (F)(2) of this rule, the applicant, employee or independent provider is subject to a seven-year exclusionary period beginning on the date the applicant, employee or independent provider was fully discharged from all imprisonment, probation or parole for the most recent offense.

(G) Tier V. No exclusionary period.

(1) A waiver agency may employ an applicant or continue to employ an employee in a position that involves providing HCBS to a consumer, and an independent provider may provide HCBS to a consumer if the applicant, employee or independent provider has been convicted of or pleaded guilty to, any of the following offenses:

(a) 2919.21 (non-support/contributing to non-support of dependents);

(b) 2925.11 (drug possession that is a minor drug possession offense); or

(c) 2925.14 (drug paraphernalia); or

(d) 2925.141 (illegal use or possession of marihuana drug paraphernalia); or

(2) A violation of an existing or former municipal ordinance or law of this state, any other state or the United States that is substantially equivalent to any of the offenses or violations described under paragraph (G)(1) of this rule.

(H) Certificates.

Except for individuals who have been convicted of or pleaded guilty to, a disqualifying offense set forth in paragraph (C) of this rule, a waiver agency may employ an applicant or continue to employ an employee in a position involving providing HCBS to a consumer, and a consumer may chose to receive services from an applicant or independent provider, if the applicant, employee or independent provider has been issued either of the following:

(1) A certificate of qualification for employment issued by a court of common pleas with competent jurisdiction pursuant to section 2953.25 of the Revised Code; or

(2) A certificate of achievement and employability in an HCBS-related field, issued by the Ohio department of rehabilitation and corections pursuant to section 2961.22 of the Revised Code.

(I) Pardons.

(1) A conviction of, or plea of guilty to, an offense as set forth in paragraph (B)(6) of rule 5101:3-45-07 of the Administrative Code shall not prevent a waiver agency from considering an applicant for employment or an employee for continued employment, if any of the following circumstances apply:

(a) The applicant or employee has been granted:

- (i) An unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code;
 - (ii) An unconditional pardon for the offense pursuant to an existing or former law of this state, any other state, or the United States, if the law is substantially equivalent to Chapter 2967. of the Revised Code; or
 - (iii) A conditional pardon for the offense pursuant to Chapter 2967. of the Revised Code, and the conditions under which the pardon was granted have been satisfied.
 - (b) The applicant's or employee's conviction or guilty plea has been set aside pursuant to law.
- (2) A conviction of, or plea of guilty to, an offense as set forth in paragraph (B)(5) of rule 5101:3-45-08 of the Administrative Code shall not prevent a consumer from choosing to receive services from an applicant or independent provider, if any of the following circumstances apply:
- (a) The applicant or independent provider has been granted:
 - (i) An unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code;
 - (ii) An unconditional pardon for the offense pursuant to an existing or former law of this state, any other state, or the United States, if the law is substantially equivalent to Chapter 2967. of the Revised Code; or
 - (iii) A conditional pardon for the offense pursuant to Chapter 2967. of the Revised Code, and the conditions under which the pardon was granted have been satisfied.
 - (b) The applicant's or independent provider's conviction or guilty plea has been set aside pursuant to law.

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