

5160-45-08

**~~Ohio home care waiver, transitions DD waiver and transitions carve-out~~ ODM-administered waiver programs: criminal records checks involving independent providers.**

(A) This rule sets forth the process and requirements for the criminal records checks of independent providers of home and community-based services (HCBS) in ~~the Ohio home care, transitions DD and transitions carve-out~~ Ohio department of medicaid (ODM) -administered ~~waivers~~ waiver programs.

(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~~ 5164.341 of the Revised Code (September 26, 2003).

(2) "Applicant" means a person who has applied for a medicaid provider agreement to provide HCBS as an independent provider under ~~the Ohio home care, transitions DD or transitions carve-out~~ an ODM-administered waiver program.

(3) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

~~(4) "Department" means Ohio office of medical assistance (OMA).~~

~~(5)~~ (4) "Disqualifying offense" means any of the following:

(a) A violation of section 959.13, 959.131, 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, 2903.341, 2905.01, 2905.02, 2905.05, 2905.11, 2905.12, 2905.32, 2905.33, 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, 2907.33, 2909.02, 2909.03, 2909.04, 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, 2917.31, 2919.12, 2919.121, 2919.321, 2919.22, 2919.23, 2919.24, 2919.25, 2921.03, 2921.11, 2921.12, 2921.13, 2921.21, 2921.24, 2921.32, 2921.123, 2921.34, 2921.35, 2921.36, 2921.51, 2923.12, 2923.122, 2923.123, 2923.13, 2923.161, 2923.162, 2923.21, 2923.32, 2923.42, 2925.02, 2925.03, 2925.04, 2925.041, 2925.05, 2925.06, 2925.09, 2925.11, 2925.13, 2925.14, 2925.141, 2925.22, 2925.23, 2925.24, 2925.36, 2925.55, 2925.56, 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; or

(b) A violation of section 2923.01, 2923.02, or 2923.03 of the Revised Code when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses listed in paragraph (B)(5)(a) of this rule; or

(c) 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)(5)(a) or (B)(5)(b) of this rule.

~~(6)~~(5) "Effective date of provider agreement" means the month in which the initial provider agreement was entered into between ~~the department~~ODM and the independent provider.

~~(7)~~(6) "Home and community-based services medicaid waiver component" has the same meaning as in section ~~5111.855~~5166.01 of the Revised Code. ~~For the purposes of this rule, "home and community-based services medicaid waiver component" is interchangeable with Ohio home care waiver, transitions DD waiver and/or transitions carve-out waiver.~~

~~(8)~~(7) "Independent provider" means a person who has a medicaid provider agreement to provide HCBS as an independent provider in ~~the Ohio home care waiver, transitions DD waiver and/or the transitions carve-out~~ an ODM-administered waiver program. The term "independent provider" is interchangeable with the term "non-agency provider" in Chapters ~~5101:3-45, 5101:3-46, 5101:3-47 and 5101:3-50~~ 5160-46 and 5160-58 of the Administrative Code.

(8) "Retained applicant fingerprint database" or "RAPBACK" means the database maintained by the bureau of criminal investigation (BCI) pursuant to section 109.5721 of the Revised Code that contains the fingerprints of individuals on whom BCI has conducted criminal record checks to determine whether an applicant is ineligible for a medicaid provider agreement pursuant to this rule.

(9) "Superintendent" means superintendent of the ~~bureau of criminal identification and investigation (BCHBCI).~~

(C) ~~ODM~~ODM or its designee shall deny an applicant's application for a medicaid provider agreement, and shall immediately take steps to terminate an independent provider's medicaid provider agreement, if ~~either~~any of the following applies:

(1) After the applicant ~~or independent provider~~ is given the information and notification required by paragraphs (D)(36)(a) ~~and~~ (D)(36)(b) ~~and~~ (D)(6)(c) of this rule, the applicant ~~or independent provider~~ fails to do any of the following:

(a) Access, complete, and forward to the superintendent of ~~BCHBCI~~ the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code, or the standard impression sheet prescribed pursuant to division (C)(2) of that section;

~~(b) Submit a criminal records check within sixty days of notification;~~

~~(c)~~(b) Instruct the superintendent to submit the completed report of the criminal records check directly to ~~OMA~~ODM or its designee; ~~or~~.

(2) Except as provided in paragraph ~~(E)~~ of this rule, the applicant or independent provider is found by a criminal records check to have been convicted of, or pleaded guilty to, a disqualifying offense, regardless of the date of the conviction, or the date of entry of the guilty plea. If ~~the department~~ODM 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.

(3) The applicant or independent provider fails to comply with the provisions of this rule.

(D) Process for conducting criminal records checks.

(1) ~~The department or its designee shall inform:~~Each applicant, at the time of initial application for a medicaid provider agreement, shall provide a set of his or her fingerprints, and a criminal records check shall be conducted as a condition of ODM's approving the application.

~~(a) Each applicant, at the time of initial application for a medicaid provider agreement, is required to provide a set of his or her fingerprint impressions, and a criminal records check must be conducted as a condition of the department's approving the application; and~~

~~(b) Each currently-enrolled independent provider, before the anniversary date of their medicaid provider agreement, that he or she is required to provide a set of his or her fingerprint impressions and that a criminal records check must be conducted~~

~~as a condition of continued approval as an independent provider in the Ohio medicaid program.~~

~~(2) The department or its designee shall require the applicant to complete a criminal records check prior to entering into a medicaid provider agreement with the applicant, and once an independent provider, at least annually thereafter.~~

~~(a) If an applicant or independent 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 applicant or independent provider from the federal bureau of investigation (FBI) in a criminal records check, the department or its designee shall request that the superintendent obtain a criminal records check from the FBI as part of the criminal records check.~~

~~(b) Even if an applicant or independent provider presents proof of having been a resident of the state of Ohio for the five-year period, the department or its designee may request that the superintendent obtain information from the FBI in the criminal records check.~~

(2) Each applicant and independent provider shall be subject to the database check requirements set forth in rule 5160-1-17.8 of the Administrative Code.

(3) If the applicant or independent 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 applicant or independent provider from the federal bureau of investigation (FBI) in a criminal records check, ODM or its designee shall request that the superintendent obtain a criminal records check from the FBI as part of the criminal records check.

(4) Even if an applicant or independent provider presents proof of having been a resident of the state of Ohio for the five-year period, ODM or its designee may request the superintendent obtain information from the FBI in the criminal records check.

(5) In order to maintain active provider status, each independent provider must have his or her fingerprints submitted to BCI to be maintained in RAPBACK. ODM shall pay BCI any reasonable fees associated with receiving notifications under division (D) of section 109.5721 of the Revised Code.

~~(3)~~(6) ~~The department~~ODM or its designee shall provide the following to each applicant and independent provider for whom a criminal records check 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) Information about accessing, completing and forwarding to the superintendent the information required for RAPBACK pursuant to section 109.5721 of the Revised Code.

~~(b)~~(c) Written notification that the applicant or independent provider is to instruct the superintendent to submit the completed report of the criminal records check directly to ~~the department~~ODM or its designee.

~~(4)~~(7) ~~The~~Each applicant and independent provider shall pay ~~BCHBCI~~ 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 subparagraphs (D)(1), (D)(3) and (D)(4) of this rule.

~~(5)~~(8) Reports of any criminal records checks conducted by ~~BCHBCI~~ 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 person who is the subject of the criminal records check or his or her representative;

(b) The director of ~~OMA~~ODM and the staff of ~~the department~~ODM involved in the administration of the Ohio medicaid program;

(c) ~~The department's~~ODM's designee;

(d) An individual who receives, or may receive, waiver services from the person who is the subject of the criminal records check; and

(e) A court, hearing officer or other necessary individual involved in a case dealing with either a denial or termination of a medicaid provider agreement related to the criminal records check, or a civil or criminal action regarding the Ohio medicaid program.

~~(6) If the independent provider fails to comply with the provisions of this rule, the department shall initiate termination of the medicaid provider agreement.~~

(E) ~~A consumer~~ An individual may choose to receive waiver services from an applicant or independent provider who has been convicted of, or pleaded guilty to, a disqualifying offense set forth in paragraph (B)(5) of this rule if:

- (1) The applicant or independent provider has satisfied the conditions associated with the exclusionary periods set forth in rule ~~5101:3-45-11~~ 5160-45-11 of the Administrative Code; or
- (2) The applicant or independent provider has obtained 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, and in accordance with rule ~~5101:3-45-11~~ 5160-45-11 of the Administrative Code; or
- (3) The applicant or independent provider has obtained a certificate of achievement and employability in an HCBS-related field issued by the Ohio department of rehabilitation and corrections pursuant to section 2961.22 of the Revised Code, and in accordance with rule ~~5101:3-45-11~~ 5160-45-11 of the Administrative Code.

(F) Pardons.

A conviction of, or a plea of guilty to, an offense as set forth in paragraph (B)(5) of this rule shall not prevent a consumer from choosing to receive services from an applicant or independent provider if any of the following circumstances apply:

- (1) The applicant or independent provider has been granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code;
- (2) The applicant or independent 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 applicant or independent 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 applicant's or independent providers' conviction or guilty plea has been set aside pursuant to law.

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CERTIFIED ELECTRONICALLY

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Certification

03/14/2018

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Date

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