

**PUBLIC HEARING NOTICE  
OFFICE OF MEDICAL ASSISTANCE**

**DATE:** November 20, 2012  
**TIME:** 10:00 A.M.  
**LOCATION:** Rhodes State Office Tower, 30 East Broad St., Lobby Hearing Room, Columbus, Ohio 43215

Pursuant to Sections 5111.033, 5111.034 and 5111.85, and Chapter 119. of the Ohio Revised Code, the director of the Office of Medical Assistance (OMA) gives notice of the department's intent to consider the adoption and rescission of the rules as identified below and of a public hearing thereon.

**Rule 5101:3-45-07**, entitled ODJFS-administered Waiver Program: Criminal Records Checks Involving Agency Providers, is being proposed for rescission for the purpose of replacement with a new rule 5101:3-45-07 which will implement provisions of RC 5111.033, adopted under Am. Sub. H.B. 487, 129th General Assembly, relating to administration of home and community based-services (HCBS) waivers. This rule sets forth the process and requirements for the criminal records checks of persons under final consideration for employment with a waiver agency, and existing employees with a waiver agency in a full-time, part-time or temporary position, and who are providing HCBS to individuals enrolled on the Ohio Home Care, Transitions DD or Transitions Carve-Out Waivers.

**Rule 5101:3-45-07**, entitled Ohio Home Care Waiver, Transitions DD Waiver and Transitions Carve-Out Waiver Programs: Criminal Records Checks Involving Agency Providers, is being proposed to replace existing rule 5101:3-45-07 in order to update the criminal record check process and requirements for employees of, and persons under final consideration for employment with, agencies that provide home and community-based services to individuals enrolled on the Ohio Home Care, Transitions DD and Transitions Carve-Out Waivers administered by the Office of Medical Assistance. These proposed changes are the result of changes in sections 5111.033 and 109.572 of the Revised Code, as enacted by Am. Sub. H.B. 487 of the 129th General Assembly. This rule sets forth the criminal records check requirements for agency providers of HCBS under the Ohio Home Care, Transitions DD and Transitions Carve-Out Waiver Programs. The rule establishes key definitions including, but not limited to: "applicant," "chief administrator," "community-based long term care agency," "disqualifying offense," "employee," "home and community-based services Medicaid waiver component" and "waiver agency." It also establishes a required review of various free databases for disqualifying information regarding an applicant or employee prior to conducting a criminal record check of an applicant or employee; exempts from database reviews and criminal record checks those individuals who are subject to criminal record check requirements in accordance with section 3701.881 or section 173.394 of the Revised Code; phases-in required criminal records rechecks every five years (e.g., employees hired prior to January 1, 2008 will be rechecked within thirty days of the anniversary of their date of hire, and employees hired on or after January 1, 2008 will be rechecked

within thirty days of the five-year anniversary of their date of hire); requires a fee to be paid by the waiver agency, which may be passed on to the applicant or employee; and allows for an individual's conditional employment for a period of 60 days while the waiver agency awaits the results of the criminal records check. The rule requires the waiver agency to terminate an individual if the results are not received within 60 days of the request or if the results disclose a disqualifying offense and the waiver agency does not choose to employ the individual after the exclusionary periods set forth in OAC rule 5101:3-45-11 have elapsed. The rule also establishes recordkeeping requirements pertaining to the criminal records check, and sets forth to whom the records check may be disclosed.

**Rule 5101:3-45-08**, entitled ODJFS-administered Waiver Program: Criminal Records Checks Involving Non-agency Providers, is being proposed for rescission for the purpose of replacement with a new rule 5101:3-45-08 which will implement provisions of RC 5111.034, adopted under Am. Sub. H.B. 487, 129th General Assembly, relating to administration of HCBS waivers. This rule sets forth the process and requirements for the criminal records checks of non-agency providers who are providing HCBS to individuals enrolled on the Ohio Home Care, Transitions DD or Transitions Carve-Out Waivers.

**Rule 5101:3-45-08**, entitled Ohio Home Care Waiver, Transitions DD Waiver and Transitions Carve-Out Waiver Programs: Criminal Records Checks Involving Non-agency Providers, is being proposed to replace existing rule 5101:3-45-08 in order to update the criminal record check process and requirements for independent providers of home and community-based services to individuals enrolled on the Ohio Home Care, Transitions DD and Transitions Carve-Out Waivers administered by the Office of Medical Assistance. These changes are the result of changes in sections 5111.034 and 109.572 of the Revised Code, as enacted by Am. Sub. H.B. 487 of the 129th General Assembly. OAC 5101:3-45-08 sets forth the criminal records check requirements for independent providers of HCBS under the Ohio Home Care, Transitions DD and Transitions Carve-Out Waiver Programs. The rule: establishes key definitions including, but not limited to: "anniversary date," "applicant," "disqualifying offense," "effective date of provider agreement," "home and community-based services Medicaid waiver component" and "independent provider;" requires criminal records rechecks annually for all independent providers; requires a fee to be paid by the independent provider; establishes recordkeeping requirements pertaining to the criminal records check; and sets forth to whom the records check may be disclosed.

**Rule 5101:3-45-11**, entitled Ohio Home Care Waiver, Transitions DD Waiver and Transitions Carve-Out Waiver Programs: Exclusionary Periods for Disqualifying Offenses; Certificates; and Pardons, is being proposed to replace existing rules 5101:3-45-07 and 5101:3-45-08, in part, in order to update the criminal record check process and requirements for employees of, and persons under final consideration for employment with, agencies that provide home and community-based services (HCBS) to individuals enrolled on the Ohio Home Care, Transitions DD and Transitions Carve-Out Waivers administered by the Office of Medical Assistance. These proposed changes are the result

of changes in sections 5111.033 and 109.572 of the Revised Code, as enacted by Am. Sub. H.B. 487 of the 129th General Assembly. The personal character standards set forth in both OAC rules 5101:3-45-07 and 5101:3-45-08 are being replaced by OAC rule 5101:3-45-11. This rule sets forth a tiered system of exclusionary periods for disqualifying offenses. The exclusionary periods range from five years to permanent exclusion depending upon the type and number of offenses. The rule also sets forth policy regarding the effect of pardons, Certificates of Qualification for Employment issued by a court of common pleas with competent jurisdiction pursuant to Section 2953.25 of the Revised Code and Certificates 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.

A copy of the proposed rules is available, without charge, to any person affected by the rules at the address listed below. The rules are also available on the internet at <http://www.registerofohio.state.oh.us/>. A public hearing on the proposed rules will be held at the date, time, and location listed at the top of this notice. Either written or oral testimony will be taken at the public hearing. Additionally, written comments submitted or postmarked no later than the date of the public hearing will be treated as testimony.

Requests for a copy of the proposed rules or comments on the rules should be submitted by mail to the Ohio Department of Job and Family Services, Office of Legal Services, 30 East Broad Street, 31<sup>st</sup> Floor, Columbus, Ohio 43215-3414, by fax at (614) 752-8298, or by e-mail at [rules@odjfs.state.oh.us](mailto:rules@odjfs.state.oh.us).