

173-14-14

Staffing requirements and staff qualifications.**(A) Staffing requirements:**

- (1) Each regional program shall employ one paid, full-time employee to serve as the program's ombudsman program director. If a program director is responsible for more than one regional program, each regional program shall have full-time supervision provided by a certified ombudsman program director in that region.
- (2) Each regional program shall maintain a staffing ratio of one paid, full-time-equivalent ombudsman to every two thousand long-term care facility beds.

(B) Staff qualifications:

- (1) Representative: To acquire/accept a candidate for certification as a representative of the office, the state or regional program shall either hire a person as a paid staff member or accept the person as a volunteer staff member. The state or regional program shall only hire/accept a person as a staff member if the person:
 - (a) Is at least eighteen years of age; and,
 - (b) Has the ability to understand and empathize with the concerns of consumers of long-term care services.
- (2) Ombudsman specialist: A regional program shall only hire a person to be the ombudsman specialist if the person is at least a registered nurse or has earned a bachelor of science degree in nursing, or a bachelor of arts or bachelor of science degree in social work, social services, a health-related field, or any other related field. Any paid representative who does not meet this requirement may substitute commensurate experience or education to meet the education qualification.
- (3) Ombudsman program director: A regional program shall only hire a person to be the ombudsman program director if the person:
 - (a) Is at least a registered nurse or has earned a bachelor of science degree in nursing, or a bachelor of arts degree or a bachelor of science degree in social work, social services, a health-related field, or any other related field. Any paid representative who does not meet this requirement may substitute commensurate experience or education to meet the education qualification.
 - (b) Has one year's experience in supervision/management in the fields of aging, long-term care, health care, social services, advocacy, or investigation.

(4) Criminal records check:

(a) In general:

- (i) Each applicant: The SLTCO (or the SLTCO's designee) shall request that BCII conduct a criminal records check on each applicant. ODA's director shall request that BCII conduct a criminal records check on each applicant under final consideration for employment as the SLTCO. Under the terms of rule 109:5-1-01 of the Administrative Code, the SLTCO (or the SLTCO's designee) may require a volunteer applicant to consent to allowing the SLTCO (or the SLTCO's designee) to request that BCII conduct a criminal records check as a precondition to serving as a volunteer.
- (ii) Notification: The SLTCO (or the SLTCO's designee) shall inform each applicant at the time of initial application that, if the applicant comes under final consideration for employment, he/she shall provide a set of fingerprint impressions for the SLTCO (or the SLTCO's designee) to use when requesting a criminal records check.
- (iii) FBI: If an applicant does not provide the SLTCO (or the SLTCO's designee) with evidence that he/she has been a resident of Ohio for the five-year period immediately preceding the date the SLTCO (or the SLTCO's designee) requests the criminal records check, or if the applicant does not provide the SLTCO (or the SLTCO's designee) with evidence that BCII has requested his/her criminal records from the FBI within that five-year period, the SLTCO (or the SLTCO's designee) shall request that BCII obtain information from the FBI as part of the criminal records check. Even if an applicant does provide the SLTCO (or the SLTCO's designee) with evidence that he/she has been a resident of Ohio for the five-year period, the SLTCO (or the SLTCO's designee) may request that BCII obtain information from the FBI as part of the criminal records check.
- (iv) Forms and fingerprints: The SLTCO (or the SLTCO's designee) shall:

 - (a) Provide each applicant with the form and fingerprint impression sheet required to conduct a criminal records check, which may be tangible, electronic (e.g., BCII's "WebCheck" program), or both tangible and electronic. If the SLTCO (or the SLTCO's designee) requests that BCII include information from the FBI in the criminal records

check report, the SLTCO (or the SLTCO's designee) shall also provide the applicant with the form necessary to obtain the FBI's information;

(b) Forward the completed form(s) and fingerprint impression sheet to BCII and also send the fee required by BCII (or arrange for payment in a method prescribed by BCII) before submitting the completed form(s) and fingerprint impression sheet for processing; and,

(c) Only hire an applicant if the applicant completes the form(s) and fingerprint impression sheet.

(v) Fees:

(a) The SLTCO (or the SLTCO's designee) shall pay BCII the fee prescribed under division (C)(3) of section 109.572 of the Revised Code for each criminal records check.

(b) The SLTCO (or the SLTCO's designee) may charge an applicant a fee so long as the fee does not exceed the amount the SLTCO (or the SLTCO's designee) pays to BCII, but only if the SLTCO (or the SLTCO's designee) notified the applicant at the time of initial application of the amount of the fee.

(b) Disqualifying offenses: Neither the SLTCO nor the SLTCO's designee shall hire an applicant who was convicted of the following violations, except under the standards of paragraph (B)(4)(c) of this rule:

(i) A violation of section 2903.01 (aggravated murder), 2903.02 (murder), 2903.03 (voluntary manslaughter), 2903.04 (involuntary manslaughter), 2903.11 (felonious assault), 2903.12 (aggravated assault), 2903.13 (assault), 2903.16 (failing to provide for a functionally impaired person), 2903.21 (aggravated menacing), 2903.34 (patient abuse), 2905.01 (kidnapping), 2905.02 (abduction), 2905.11 (extortion), 2905.12 (coercion), 2907.02 (rape), 2907.03 (sexual battery), 2907.05 (gross sexual imposition), 2907.06 (sexual imposition), 2907.07 (importuning), 2907.08 (voyeurism), 2907.09 (public indecency), former section 2907.12 (felonious sexual penetration), 2907.25 (prostitution after positive HIV test), 2907.31 (disseminating matter harmful to juveniles), 2907.32 (pandering obscenity), 2907.321 (pandering obscenity involving a minor), 2907.322 (pandering sexually-oriented matter involving a minor), 2907.323 (illegal use of minor in nudity-oriented material or performance), 2911.01

(aggravated robbery), 2911.02 (robbery), 2911.11 (aggravated burglary), 2911.12 (burglary), 2911.13 (breaking and entering), 2913.02 (theft, aggravated theft, grand theft, grand theft of a motor vehicle), 2913.03 (unauthorized use of a vehicle), 2913.04 (unauthorized use of property, computer, cable, or telecommunications property or service), 2913.11 (passing bad checks), 2913.21 (misuse of credit cards), 2913.31 (forgery, forging identification cards, or selling/distributing forged identification cards), 2913.40 (medicaid fraud), 2913.43 (securing writings by deception), 2913.47 (insurance fraud), 2913.51 (receiving stolen property), 2919.25 (domestic violence), 2921.36 (illegal conveyance of weapons, drugs, or prohibited items onto grounds of detention facility or institution), 2923.12 (carrying concealed weapons), 2923.13 (having weapons while under disability), 2923.161 (improperly discharging firearm at or into habitation; school-related offenses), 2925.02 (corrupting another with drugs), 2925.03 (trafficking in drugs, aggravated trafficking in drugs), 2925.11 (aggravated possession of drugs, possession of drugs, possession of marihuana (unless a minor misdemeanor), possession of cocaine, possession of LSD, possession of heroin, possession of hashish), 2925.13 (permitting drug use), 2925.22 (deception to obtain a dangerous drug), 2925.23 (illegal processing of drug documents), or 3716.11 (placing harmful object in food or confection) of the Revised Code; or,

(ii) A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any violation described in paragraph (B)(4)(b)(i) of this rule.

(c) Personal character standards: If an applicant was convicted of a disqualifying offense, the SLTCO (or the SLTCO's designee) may use paragraphs (B)(4)(c)(i) and (B)(4)(c)(ii) of this rule to determine if it is permissible to hire the applicant:

(i) The SLTCO (or the SLTCO's designee) shall not, under any circumstance, hire an applicant who was convicted of a disqualifying offense, if the offense was:

(a) A violation of section 2903.01 (aggravated murder), 2903.02 (murder), 2903.03 (voluntary manslaughter), 2903.34 (patient abuse or neglect), section 3716.11 of the Revised Code (adulteration of food), or a violation of an existing or former law of this state, any other state, or the United States, if the offense is substantially equivalent to any offense described in section 2903.01, 2903.02, 2903.03, 2903.34, or 3716.11 of the Revised Code;

(b) A sexually-oriented offense. "Sexually-oriented offense" means a violation of section 2907.02 (rape), 2907.03 (sexual battery), 2907.05 (gross sexual imposition), or 2907.12 of the Revised Code (felonious sexual penetration), regardless of the age of the victim; a violation of section 2905.01 (kidnapping) or 2905.02 of the Revised Code (abduction), if the victim was a minor; a violation of division (A)(1) or (A)(3) of section 2907.321 of the Revised Code (pandering obscenity involving a minor); a violation of division (A)(1) or (A)(3) of section 2907.322 of the Revised Code (pandering sexually-oriented matter involving a minor); a violation of division (A)(1) or (A)(2) of section 2907.323 of the Revised Code (illegal use of minor in nudity-oriented material or performance); section 2903.01 (aggravated murder), 2903.02 (murder), 2903.11 (felonious assault), or 2905.01 of the Revised Code (kidnapping), or of division (A) of section 2903.04 of the Revised Code (involuntary manslaughter), regardless of the age of the victim, if the purpose was to gratify the sexual needs or desires of the offender; a sexually-violent offense; or a violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to the any offense previously-listed in this paragraph. "Sexually-violent offense" means a violent sex offense, or a designated homicide, assault, or kidnapping offense for which the offender also was convicted of a sexual motivation specification. "Violent sex offense" means a violation of section 2907.02 (rape), 2907.03 (sexual battery), or 2907.12 of the Revised Code (felonious sexual penetration) or a felonious violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to section 2907.02, 2907.03, or 2907.12 of the Revised Code. "Designated homicide, assault, or kidnapping offense" means a violation of section 2903.01 (aggravated murder), 2903.02 (murder), 2903.11 (felonious assault), or 2905.01 of the Revised Code (kidnapping) or a violation of division (A) of section 2903.04 of the Revised Code (involuntary manslaughter). "Sexual motivation" means a purpose to gratify the sexual needs or desires of the offender, as described in section 2971.01 of the Revised Code. "Sexual motivation specification" means a specification, as described in section 2941.147 of the Revised Code, that charges that a person charged with a designated homicide, assault, or kidnapping offense committed the offense with a sexual motivation.

(c) A repeat theft-related offense. "Repeat theft-related offense" means a subsequent offense by a person who has been convicted of the commission of any two theft-related offenses or a combination of any two theft-related offenses in two separate criminal actions. "Theft-related offense" means a violation of section 2911.13 (breaking and entering), 2913.02 (theft, aggravated theft, grand theft, grand theft of a motor vehicle), 2913.03 (unauthorized use of a vehicle), 2913.04 (unauthorized use of property--computer, cable, or telecommunications property), 2913.11 (passing bad checks), 2913.21 (misuse of credit cards), 2913.31 (forgery; identification card offenses), 2913.40 (medicaid fraud), 2913.43 (securing writings by deception), 2913.47 (insurance fraud), or 2913.51 (recovering stolen property), or a violation of existing or former laws of this state, any other state, or the United States that are substantially equivalent to section 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.40, 2913.43, 2913.47, or 2913.51 of the Revised Code. The SLTCO (or the SLTCO's designee) shall consider two or more theft-related offenses as one offense if the offenses are connected with the same act or were committed at the same time;

(d) A violent offense against an older adult or a person with a disability or a violent offense against any other person if the applicant has not been fully discharged for a period of at least five years from the criminal sentence resulting from the violent offense. "Criminal sentence" means imprisonment, intensive program prison, probation, compact probation, parole, compact parole, post-release control (PRC), transitional control, judicial release, treatment in lieu of conviction, or a community control sanction, as defined in rule 5120:1-5-01 of the Administrative Code. "Violent offense" means a violation of section 2903.01 (aggravated murder), 2903.02 (murder), 2903.03 (voluntary manslaughter), 2903.04 (involuntary manslaughter), 2903.11 (felonious assault), 2903.12 (aggravated assault), 2903.13 (assault), 2903.21 (aggravated menacing), 2905.01 (kidnapping), 2905.02 (abduction), 2905.11 (extortion), 2907.02 (rape), 2907.03 (sexual battery), 2907.12 (felonious sexual penetration), 2911.01 (aggravated robbery), 2911.02 (robbery), 2911.11 (aggravated burglary), 2911.12 (burglary), 2919.25 (domestic violence), or 2923.161 of the Revised Code

(improperly discharging firearm at or into habitation; school-related offenses); a violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.21, 2905.01, 2905.02, 2905.11, 2907.02, 2907.03, 2907.12, 2911.01, 2911.02, 2911.11, 2911.12, 2919.25, or 2923.161 of the Revised Code; or, a violation of another disqualifying offense that was committed purposely or knowingly, and involved physical harm to another person or a risk of serious physical harm to another person.

(e) A repeat-violent offense. "Repeat-violent offense" means the subsequent offense by a person who was convicted of any violent offense. The SLTCO (or the SLTCO's designee) shall consider two or more repeat-violent offenses as one offense if they are connected with the same act or were committed at the same time.

(ii) The SLTCO (or the SLTCO's designee) may hire an applicant who was convicted of a disqualifying offense that is not listed under paragraph (B)(4)(c)(i) of this rule. To do so, the SLTCO (or the SLTCO's designee) shall determine the likelihood that the applicant may commit another disqualifying offense by considering:

(a) The extent to which the position being sought could provide the applicant with an opportunity to commit the same offense or a similar offense;

(b) The duties and responsibilities of the position being sought;

(c) The nature and seriousness of the offense;

(d) Whether or not the offense was a theft-related offense;

(e) Whether or not the offense was a violent offense;

(f) The applicant's age at the time of the offense;

(g) The degree to which the applicant participated in the offense; and,

(h) The age and ability of the victim, including whether the victim was an individual with physical disability or an older adult. The SLTCO (or the SLTCO's designee) should use greater caution in hiring an applicant whose victim was an older

adult.

(i) The time elapsed since the applicant was fully discharged from any criminal sentence;

(j) The applicant's effort to rehabilitate and the result of the effort;

(k) If a criminal proceeding is pending against the applicant;

(l) If the applicant was convicted of an offense that is not a disqualifying offense, but bears a direct and substantial relationship to the duties and responsibilities of the position being filled; and,

(m) Any other factor that is relevant to the performance of the job duties.

(iii) It is the duty of an applicant who was convicted of a disqualifying offense to provide sufficient evidence that he/she meets the personal character standards under paragraph (B)(4)(c)(ii) of this rule. If the applicant fails to do so, or if the SLTCO (or the SLTCO's designee) determines that the applicant's evidence is insufficient, the SLTCO (or the SLTCO's designee) shall not hire the applicant for a position in which the applicant would provide ombudsman services to residents and recipients.

(d) Pardons: The SLTCO (or the SLTCO's designee) may hire an applicant who was convicted of a disqualifying offense if:

(i) The applicant was granted an unconditional pardon for the offense under Chapter 2967. of the Revised Code or 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;

(ii) The applicant was granted a conditional pardon for the offense under Chapter 2967. of the Revised Code or 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, and every condition under which the pardon was granted is now satisfied; or,

(iii) The conviction or guilty plea has been set aside pursuant to law.

(e) Conditional employment:

(i) The SLTCO (or the SLTCO's designee) may only hire an applicant before obtaining a criminal records check report if:

- (a) The SLTCO (or the SLTCO's designee) hires the applicant on a conditional basis;
 - (b) The SLTCO (or the SLTCO's designee) initiates the process of obtaining a criminal records check no later than five business days after the applicant begins conditional employment; and,
 - (c) The applicant provides the SLTCO (or the SLTCO's designee) with a completed fingerprint impression sheet before the commencement of the applicant's conditional employment.
 - (ii) The SLTCO (or the SLTCO's designee) shall terminate the applicant's conditional employment if:
 - (a) The SLTCO (or the SLTCO's designee) does not receive a criminal records check report from BCII in fewer than sixty days after the SLTCO (or the SLTCO's designee) requested it from BCII; or,
 - (b) The SLTCO (or the SLTCO's designee) received the criminal records check report in fewer than sixty days and it indicates that the applicant was convicted of a disqualifying offense, unless the SLTCO (or the SLTCO's designee) chooses to hire the applicant under paragraph (E) of this rule.
 - (iii) If the applicant hired conditionally deceived the SLTCO (or the SLTCO's designee) about the facts regarding his/her criminal records, termination of the applicant's conditional employment is just cause for discharge under division (D)(2) of section 4141.29 of the Revised Code.
- (f) Confidentiality: A criminal records check report is not a public record for the purposes of section 149.43 of the Revised Code and the SLTCO (or the SLTCO's designee) shall not make a report available to any person other than:
- (i) Himself/herself;
 - (ii) The applicant who is the subject of the criminal records check or the applicant's representative;
 - (iii) The SLTCO, the SLTCO's designee, ODA's director, or the ombudsman, designee, or the director's representative;

(iv) A person in a regional program designated by the SLTCO under paragraph (E)(3) of section 173.27 of the Revised Code; or,

(v) A court hearing officer or other necessary person involved in a case, regarding a denial to hire the applicant.

(C) Conflict of interest: Upon initial hiring, no candidate for certification as a representative of the office shall have an unremedied conflict of interest. The SLTCO and the regional programs shall develop procedures for their respective programs to screen potential candidates for representative of the office for conflicts of interest. If a sponsoring agency discovers a conflict of interest involving one of its candidates for certification, the sponsoring agency shall notify the SLTCO and shall apply for a waiver of the conflict of interest or propose a remedy for the conflict of interest under rule 173-14-15 of the Administrative Code. If the SLTCO discovers a conflict of interest involving one of the candidates for certification, in the state program, the SLTCO shall notify ODA's director and shall apply for a waiver of the conflict of interest or propose a remedy for the conflict of interest under rule 173-14-15 of the Administrative Code.

(D) Definitions:

(1) "Applicant" means a person who is under final consideration for employment with the office of the SLTCO in a full-time, part-time or temporary position that involves providing ombudsman services to residents and recipients. "Applicant" includes a person who is under final consideration for employment as the SLTCO or the head of a regional long-term care ombudsman program. "Applicant" does not include a person who provides ombudsman services to residents and recipients as a volunteer without receiving or expecting to receive any form of remuneration other than reimbursement for actual expenses.

(2) "BCII" means "the bureau of criminal identification and investigation" and includes the superintendent of BCII.

(3) "Convicted of" also means "convicted of, or pled guilty to."

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

(5) "Designee" means the person in the designated regional program or sponsoring agency who makes the final decision in the hiring of an applicant.

(6) "FBI" means "federal bureau of investigation."

Replaces: 173-14-14
Effective: 02/15/2009
R.C. 119.032 review dates: 10/31/2013

CERTIFIED ELECTRONICALLY

Certification

02/05/2009

Date

Promulgated Under: 119.03
Statutory Authority: 173.02, 173.16, 173.27
Rule Amplifies: 173.16, 173.27
Prior Effective Dates: 7/11/1991, 12/27/2001, 12/28/2006