

TO BE RESCINDED

173-14-14

Staffing requirements and qualifications.

(A) As used in this rule:

- (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, but is not limited to, 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) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code;
- (3) "Sexually-oriented offense" means any of the following offenses:
 - (a) Regardless of the age of the victim of the offense, a violation of section 2907.02 (rape), 2907.03 (sexual battery), 2907.05 (gross sexual imposition), or 2907.12 (felonious sexual penetration) of the Revised Code;
 - (b) Any of the following offenses involving a minor in the circumstances specified:
 - (i) A violation of section 2905.01 (kidnapping) or 2905.02 (abduction) of the Revised Code;
 - (ii) A violation of section 2907.321 (pandering obscenity involving a minor), 2907.322 (pandering sexually-oriented material involving a minor), or 2907.323 (illegal use of minor in nudity-oriented material or performance) of the Revised Code; or,
 - (c) Regardless of the age of the victim of the offense, a violation of section 2903.01 (aggravated murder), 2903.02 (murder), 2903.11 (felonious assault), 2905.01 (kidnapping), or 2903.04 (voluntary manslaughter) of the Revised Code if committed for the purpose of gratifying the sexual needs or desires of the offender;

- (d) Any sexually violent offense listed or described in paragraph (A)(7) of this rule;
 - (e) A violation of any former law of this state that was substantially equivalent to any offense listed in paragraphs (A)(3)(a) to (A)(3)(d) of this rule; or,
 - (f) A violation of an existing or former law of another state or the United States, or a violation under the law applicable in a military court, that is or was substantially equivalent to any offense listed in paragraphs (A)(3)(a) to (A)(3)(d) of this rule;
- (4) "Theft-related offense" means a violation of any of the following sections of the Revised Code: 2913.03 (unauthorized use of a vehicle), 2913.11 (passing bad checks), 2913.21 (misuse of credit cards), 2913.31 (forgery; identification card offenses), 2913.40 (medicaid fraud), 2913.47 (insurance fraud), or 2913.51 (recovering stolen property);
- (5) "Repeat theft-related offense" means a person who has been convicted of or pleaded guilty to the commission of any two theft-related offenses, or a combination of any two theft-related offenses as defined in paragraph (A)(4) of this rule, in two or more separate criminal actions;
- (6) "Offense of violence" means any of the following:
- (a) A violation of any of the following sections of the Revised Code: 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 (improperly discharging firearm at or into habitation; school-related offenses);
 - (b) A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any section listed in paragraph (A)(6)(a) of this rule; or,
- (7) "Sexually-violent offense" means a violent sex offense, or a designated homicide, assault, or kidnapping offense of which the offender also was

convicted or pleaded guilty;

(a) "Designated homicide, assault, or kidnapping offense" means a violation of sections 2903.01 (aggravated murder), 2903.02 (murder), 2903.11 (felonious assault), 2905.01 (kidnapping) of the Revised Code, or a violation of division (A) of section 2903.04 (involuntary manslaughter) of the Revised Code;

(b) "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;

(c) "Sexual motivation specification" means a specification, as described in section 2941.147 of the Revised Code, that a person charged with a designated homicide assault or kidnapping offense committed the offense with a sexual motivation; and,

(d) "Violent sex offense" means any of the following:

(i) A violation of section 2907.02 (rape), 2907.03 (sexual battery), or 2907.12 (felonious sexual penetration) of the Revised Code; or,

(ii) A felony violation of a former law of this state, any other state, or the United States that is substantially equivalent to a violation listed in paragraph (A)(8)(d)(i) of this rule.

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

(B) Each regional program shall employ one paid, full-time employee to serve as the program's ombudsman program director. When a program director is responsible for more than one regional program, each regional program must have full-time supervision provided by a certified ombudsman program director in that region.

Each regional program shall maintain a staffing ratio of one paid full-time equivalent ombudsman to every two thousand long-term care facility beds.

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 as specified in 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 the director of the department of aging and shall apply for a waiver of the conflict of interest or propose a remedy for the conflict of interest as specified in rule 173-14-15 of the Administrative Code.

- (C) To become a candidate for representative, a person shall be hired as a paid staff member or accepted as a volunteer staff member of a regional program or the state program. All persons hired or accepted as representatives shall be at least eighteen years of age. Applicants for paid staff positions must also undergo a criminal records check consistent with section 173.27 of the Revised Code. Except as otherwise provided in paragraphs (F) and (G) of this rule, an applicant for a paid position may not be hired if the applicant has been convicted of or pled guilty to any of the offenses outlined in paragraph (E)(3) of this rule. The SLTCO or the SLTCO's designee may require a volunteer applicant to undergo, and pay for, a criminal records check of the applicant's state records in accordance with rule 109:5-1-01 of the Administrative Code as a precondition to serving as a volunteer.
- (1) Any person hired as an ombudsman program director or an ombudsman specialist shall be at least a registered nurse or have 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 and/or education to meet the education qualification.
 - (2) Any person hired as an ombudsman program director shall have one year's experience in supervision/management in the fields of aging, or long-term care, health care, social services, advocacy, or investigation.
 - (3) Any person hired or accepted as a representative shall have the ability to understand and empathize with the concerns of consumers of long-term care services.
- (D) The SLTCO or the SLTCO's designee shall request that the superintendent of the bureau of criminal identification and investigation (BCII) conduct a criminal records check of each applicant. If the applicant is under final consideration for employment as the SLTCO, the director of the department of aging shall request that the superintendent conduct the criminal records check.

If the individual has not been a resident of Ohio for a five-year period immediately prior to the date of the criminal records check, the SLTCO or the SLTCO's

designee shall request that the superintendent obtain information from the federal bureau of investigation as part of the criminal records check of the applicant. Such a request for information from the federal bureau of investigation may be required of any applicant, upon the request of the SLTCO, the SLTCO's designee, or the director of the department of aging.

(E)

- (1) The SLTCO or SLTCO's designee shall inform each prospective employee of the office of the SLTCO at the time of initial application, that as a precondition to being approved for the position:
 - (a) The person is required to complete the BCII prescribed criminal records check form and provide a set of fingerprint impressions; and,
 - (b) A criminal records check is required to be conducted by BCII and satisfactorily completed if the prospective employee comes under final consideration for appointment or employment.
- (2) Should the applicant satisfactorily complete the BCII criminal records check, the applicant may be considered for employment.
- (3) Except as other wise provided in paragraphs (F) and (G) of this rule, no applicant who has been convicted of or pleaded guilty to any the following offenses may be employed in a full-time, part-time, or temporary position:
 - (a) Sections 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), 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), 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, identification card offenses), 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 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), 2925.11 (possession of drugs), 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;

- (b) A violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to any section listed in paragraph (E)(3)(a) of this rule;

(4)

- (a) The office of the SLTCO may employ conditionally an applicant for whom a criminal records check request is required under paragraph (D) of this rule prior to obtaining the results of a criminal records check regarding the individual, provided that the SLTCO, the SLTCO's designee, or the director of the department request a criminal records check regarding the individual in accordance with paragraph (D) of this rule not later than five business days after the individual begins conditional employment.
- (b) The office of the SLTCO shall terminate the employment of an individual employed conditionally under paragraph (E)(4)(a) of this rule if the results of the criminal records check request under paragraph (D) of this rule, other than the results of any request or information from the federal bureau of investigation, are not obtained within the period ending sixty days after the date the request is made. Regardless of when the results of the criminal records check are obtained, if the results indicate that the individual has been convicted of or pleaded guilty to any of the offenses listed or described in paragraph (E)(3) of this rule, the SLTCO shall terminate the individual's employment unless the SLTCO chooses to employ the individual pursuant to paragraph (F) of this rule. Termination of employment under this rule shall be

considered just cause for discharge for purposes of division (D)(2) of section 4141.29 of the Revised Code if the individual makes any attempt to deceive the office about the individual's criminal record.

(F)

- (1) The SLTCO or the SLTCO's designee may employ an applicant who has been convicted of or pleaded guilty to an offense listed in this rule in a position that involved providing ombudsman services to residents and recipients, if all of the following personal character standards are met for each offense:
 - (a) The offense is not a sexually-oriented offense as defined in paragraph (A)(3) of this rule;
 - (b) The offense is not one of abuse or neglect as described in section 2903.34 of the Revised Code or a violation of an existing or former law of this state, another state, or the United States, if the offense is substantially equivalent to any offense described in section 2903.34 of the Revised Code;
 - (c) The offense is not one of adulteration of food as described in section 3716.11 of the Revised Code 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 3716.11 of the Revised Code;
 - (d) The offense is not a repeat theft-related offense, as defined in paragraph (A)(5) of this rule or a violation of any two, or a combination of any two existing or former laws of this state, any other state, or the United States, if the theft-related offenses are substantially equivalent to any of the offenses described in paragraph (A)(4) of this rule;
 - (e) The offense is not one of aggravated murder as described in section 2903.01 of the Revised Code 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 of the Revised Code;
 - (f) The offense is not one of murder as described in section 2903.02 of the Revised Code 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 2903.02 of the Revised Code;

Code; and,

- (g) The offense is not one of voluntary manslaughter as described in section 2903.03 of the Revised Code 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 2903.03 of the Revised Code.
- (2) When paragraph (F)(1) of this rule is met, the SLTCO or the designee of the SLTCO shall consider each of the following factors in determining whether it is not likely that the applicant will commit another disqualifying offense:
- (a) The duties and responsibilities of the position;
 - (b) The nature and seriousness of the offense;
 - (c) The circumstances under which the offense was committed, including, but not limited to:
 - (i) The age of the applicant at the time of the offense;
 - (ii) The nature and seriousness of the offense; and,
 - (iii) The age and ability of the victim, including whether the victim was an individual with a physical disability or an older adult;
 - (d) The extent to which the position being filled provides an opportunity for the commission of the same or similar offenses;
 - (e) The time elapsed since the applicant was fully discharged from imprisonment, probation, or parole;
 - (f) The efforts toward rehabilitation on the part of the applicant and the results of those efforts;
 - (g) Whether any criminal proceedings are pending against the applicant;
 - (h) A conviction listed on the report of the criminal background check which lists any offense contained in the Revised Code that is not listed in paragraph (E)(4)(a) of this rule, if the crime bears a direct and substantial relationship to the duties and responsibilities of the position

being filled; and,

(i) Any other factors which are relevant to the performance of the job duties.

(3) It is the duty of an applicant to provide proof that the standards in regard to personal character specified in paragraphs (F)(1) and (F)(2) of this rule are met. If the applicant fails to provide such proof or if the SLTCO or the SLTCO's designee determines that the proof offered by the applicant is inconclusive, the applicant shall not be placed in a position that involves providing ombudsman services to residents and recipients.

(G) A conviction of or a plea of guilty to an offense listed or described in paragraph (E)(3)(a) of this rule shall not prevent the employment of an applicant under any of the following circumstances:

(1) The applicant has been granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code;

(2) The applicant has been granted 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;

(3) The applicant 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.

(H)

(1) The office of the SLTCO shall pay the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check conducted pursuant to a request made under paragraph (D) of this rule.

(2) The office of the SLTCO may charge an applicant a fee not exceeding the amount the office pays under division (C)(3) of section 109.572 of the Revised Code. The office may collect a fee only if the office notifies the applicant at the time of initial application for employment of the amount of the fee.

- (I) The report of any criminal records check conducted pursuant to a request made under this section is not a public record for the purposes of section 149.43 of the Revised Code and shall not be made available to any person other than the following:
- (1) The individual who is the subject of the criminal records check or the individual's representative;
 - (2) The SLTCO, the SLTCO's designee, the director, or the ombudsman, designee, or director's representative;
 - (3) If the SLTCO designates the head or other employee of a regional long-term care ombudsman program to request a criminal records check under this section, a representative of the office of the SLTCO who is responsible for monitoring the regional program's compliance with this section;
 - (4) A court, hearing officer, or other necessary individual involved in a case dealing with a denial of employment of an applicant or dealing with employment or unemployment benefits of an applicant.

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Certification

02/05/2009

Date

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