

173-14-14**Staffing requirements, staff qualifications, and background checks.**

(A) Staffing requirements: Each regional program shall have a full-time program director. If a sponsoring agency administers more than one regional program, each regional program shall have full-time supervision provided by a certified ombudsman program director in that region, unless otherwise approved by the state ombudsman.

(B) Staff qualifications:

(1) Ombudsman candidate: To accept a candidate for certification as an ombudsman candidate, 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 may hire or accept a person only if the person:

(a) Is at least eighteen years of age; and

(b) Has the ability to understand and empathize with the concerns of clients of long-term care services.

(2) Ombudsman specialist: A regional program may designate a person to be an ombudsman specialist only 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, or a health-related field. Any paid ombudsman specialist who does not meet this requirement may substitute commensurate experience or education to meet the education qualification with the approval of the SLTCO.

(3) Ombudsman program director: A regional program may designate a person to be the ombudsman program director only if the person meets both of the following requirements:

(a) The person 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 ombudsman program director who does not meet this requirement may substitute commensurate experience or education to meet the education qualification.

(b) The person has one year's experience in supervision/management in the fields of aging, long-term care, health care, social services, advocacy, or investigation with the approval of the SLTCO.

(4) Background checks: Section 173.27 of the Revised Code and paragraph (C) of this rule establish background-check requirements for hiring an applicant for, or retaining an employee in, a paid ombudsman position.

(C) Background checks for paid ombudsman positions:

(1) Definitions for paragraph (C) of this rule:

"AGE means the Ohio department of aging.

"Applicant" means a person that a responsible party is giving final consideration for hiring into a paid ombudsman position that is full-time, part-time, or temporary, including the position of state long-term care ombudsman or regional director. "Applicant" does not include a volunteer.

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

"Criminal records" has the same meaning as "results of the criminal records check," "results," and "report" in section 173.27 of the Revised Code when the section uses "results of the criminal records check," "results," and "report" to refer to the criminal records that BCII provides to responsible parties that conduct criminal records checks. Criminal records originate from BCII unless the context indicates that the criminal records originate from the FBI.

"Criminal records check" ("check") means the criminal records check described in section 173.27 of the Revised Code.

"Disqualifying offense" means any offense listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code.

"Employee" means a person that a responsible party hired into a paid ombudsman position that is full-time, part-time, or temporary, including the position of the state long-term care ombudsman or regional director. "Employee" does not include a volunteer.

"FBI" means "federal bureau of investigation."

"Fire" has the same meaning as "terminate" in section 173.27 of the Revised Code when the "terminate" regards firing an employee.

"Hire" has the same meaning as "employ" in section 173.27 of the Revised Code when "employ" regards hiring an applicant.

"Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code.

"Ombudsman position" has the same meaning as "position that involves providing ombudsman services to residents and recipients" in section 173.27 of the Revised Code. "Ombudsman position" includes the positions of ombudsman associate, ombudsman specialist, and ombudsman program director.

"Release" has the same meaning as "terminate" in section 173.27 of the Revised Code when "terminate" regards releasing a conditionally-hired applicant.

"Responsible party": When hiring an applicant for, or retaining an employee in, a paid ombudsman position as the state long-term care ombudsman, "responsible party" means AGE's director. When hiring an applicant for, or retaining an employee in, a paid ombudsman position in the office of the state long-term care ombudsman, "responsible party" means the state long-term care ombudsman. When hiring an applicant for, or retaining an employee in, a paid ombudsman position as the director of a regional program, "responsible party" means the regional program. When hiring an applicant for, or retaining an employee in, a paid ombudsman position in the regional program, "responsible party" means the regional program.

"Retain" has the same meaning as "continue to employ" in section 173.27 of the Revised Code.

"Volunteer" means a person who serves in an ombudsman position without receiving, or expecting to receive, any form of remuneration other than reimbursement for actual expenses.

(2) Reviewing databases:

- (a) Databases to review: Any time this rule requires a responsible party to review an applicant's (pre-hire) or employee's (post-hire) status in databases, the responsible party shall review the seven databases listed in paragraphs (C)(2)(a)(i) to (C)(2)(a)(vii) of this rule. In the table below, AGE listed the web address (URL) on which each database was accessible to the public at the time of this rule's adoption. If a URL listed in the table becomes obsolete, please consult with the government entity publishing the database for an updated URL.

DATABASES TO REVIEW

<u>SAM</u>	<u>https://www.sam.gov/</u>
<u>OIG</u>	<u>https://exclusions.oig.hhs.gov/</u>
<u>Abuser Registry</u>	<u>https://its.prodapps.dodd.ohio.gov/ABR_Default.aspx</u>
<u>ODM Provider Exclusion and Suspension List</u>	<u>https://medicaid.ohio.gov/resources-for-providers/enrollment-and-support/provider-enrollment/provider-exclusion-and-suspension-list</u>
<u>Sex-Offender Search</u>	<u>http://www.icrimewatch.net/index.php?AgencyID=55149&disc=</u>
<u>Offender Search</u>	<u>https://appgateway.drc.ohio.gov/OffenderSearch</u>
<u>Nurse-Aide Registry</u>	<u>https://nurseaideregistry.odh.ohio.gov/Public/PublicAbuseListing</u>

- (i) The United States general services administration's system for award management, which is maintained pursuant to subpart 9.4 of the federal acquisition regulation.
- (ii) The office of inspector general of the United States department of health and human services' list of excluded individuals and entities, which is maintained pursuant to 42 U.S.C. 1320a-7 and 1320c-5.
- (iii) The department of developmental disabilities' online abuser registry, established under section 5123.52 of the Revised Code, which lists people cited for abuse, neglect, or misappropriation.
- (iv) The Ohio attorney general's sex offender and child-victim offender database, established under division (A)(1) of section 2950.13 of the Revised Code.
- (v) The department of rehabilitation and correction's database of inmates, established under section 5120.66 of the Revised Code.
- (vi) The department of health's state nurse aide registry, established under section 3721.32 of the Revised Code. If the applicant or employee does not present proof that he or she has been a resident of Ohio for the five-year period immediately preceding the date of the database review, the responsible party shall conduct a database review of the nurse aide registry in the state or states in which the applicant or employee lived.

(b) When to review databases:

- (i) Applicants (pre-hire): The responsible party shall review each applicant's (pre-hire) status in the databases before conducting the criminal records check under paragraph (C)(3) of this rule.
- (ii) Employees (post-hire): The responsible party shall review each employee's (post-hire) status in the databases before conducting the criminal records check under paragraph (C)(3) of this rule.

(c) Disqualifying status:

- (i) No responsible party may hire an applicant or retain an employee if the applicant's or employee's status in the databases reveals that one or more of the databases in paragraphs (C)(2)(a)(i) to (C)(2)(a)(vi) of this rule lists the applicant or employee or the database in paragraph (C)(2)(a)(vii) of this rule lists the applicant or employee as a person who abused, neglected, or exploited a long-term care facility resident or misappropriated such a resident's property.
- (ii) If the responsible party's database reviews reveal that the applicant or employee is disqualified, the responsible party shall inform the applicant or employee of the disqualifying information.

(3) Criminal records checks: when to check criminal records, inform applicants, charge fees, and use forms.

- (a) Database reviews first: The responsible party shall conduct database reviews on each applicant (pre-hire) and each employee (post-hire) before conducting a criminal records check. If the database reviews disqualify the applicant or employee, the responsible party shall not conduct a criminal records check. If the database reviews do not disqualify the applicant or employee, the responsible party shall conduct a criminal records check.
- (b) Procedures: Section 173.27 of the Revised Code and Chapter 109:5-1 of the Administrative Code establish the procedures for conducting criminal records checks.
- (c) When to check criminal records:
 - (i) Applicants (pre-hire): The responsible party shall conduct a criminal records check on each applicant.

(ii) Employees (post-hire): According to one of the following three schedules, the responsible party shall conduct a post-hire criminal records check on each employee at least once every five years:

(A) Five-year schedule: The responsible party shall conduct a criminal records check on the employee no later than thirty days after the fifth anniversary of the employee's date of hire and no later than thirty days after each five-year anniversary. A responsible party that follows this schedule is not required to wait until the employee's five-year anniversary to conduct a criminal records check. The responsible party has five years, plus thirty days, to conduct the next check.

(B) Less-than-five-year schedule: The responsible party may conduct criminal records checks on an employee more frequently than every five years. If the responsible party checks more frequently than every five years, the responsible party is not required to conduct criminal records checks according to the five-year schedules. If a responsible party complies with the requirements for rapback, the responsible party is conducting criminal records checks on a daily basis, which is a less-than-five-year schedule.

(d) Special situations:

(i) Reverification: If any person requested a criminal records check on an applicant or employee in the past year that included sealed criminal records in a BCII report, the responsible party may request a reverification of the criminal records from BCII. The reverification of the criminal record has the same validity as the criminal records received during the past year.

(ii) Divisions (E) and (F) of section 173.27 of the Revised Code establishes standards for when to request that BCII obtain information from FBI as part of the criminal records check on the applicant or employee.

(4) Conditional hiring: A responsible party may conditionally hire an applicant for a paid ombudsman position for up to sixty days if the responsible party complies with all requirements and limitations under division (F) of section 173.27 of the Revised Code. This paragraph does not subject employees who hold paid ombudsman positions to a conditional status when they undergo post-hire criminal records checks.

- (5) Disqualifying offenses: The disqualifying offenses for this rule are the same as the disqualifying offenses listed in rule 173-9-06 of the Administrative Code.
- (6) Hiring an applicant, or retaining an employee, who has a disqualifying offense on criminal record: There are four possible ways to hire an applicant, or retain an employee, if the applicant's or employee's criminal record contains a disqualifying offense: not being in a period of disqualification under paragraph (A) of rule 173-9-07 of the Administrative Code, limited grandfathering under paragraph (B) of rule 173-9-07 of the Administrative Code, obtaining a certificate under paragraph (C) of rule 173-9-07 of the Administrative Code, or being pardoned under paragraph (D) of rule 173-9-07 of the Administrative Code.
- (7) Confidentiality: Criminal records are not public records. The responsible party shall make criminal records available only to the people or entities listed under division (G) of section 173.27 of the Revised Code.
- (8) Records retention:
- (a) Personnel files:
- (i) What to retain: To verify compliance with this rule, for each applicant the responsible party hired and each employee the responsible party retained, the responsible party shall retain electronic or paper copies of the following records:
- (A) The result of each of the database reviews.
- (B) Any criminal records including reverified records received as a result of a check conducted to comply with section 173.27 of the Revised Code.
- (C) The written attestation to the character and fitness of the employee, if the responsible party completed a written attestation before April 1, 2013 to comply with paragraph (C) (6)(c)(1) of this rule.
- (D) A certificate of qualification for employment, if a court issued a certificate of qualification for employment to the employee.
- (E) A certificate of achievement and employability, if the department of rehabilitation and corrections issued a certificate of achievement and employability to the employee.

(F) A pardon, if a governor pardoned the employee.

(G) The date the responsible party hired the employee.

(ii) Sealed files: The responsible party shall retain the records required under paragraph (C)(8)(a)(i) of this rule by sealing the records within each applicant's or each employee's personnel files or by retaining the records in separate files from the personnel files.

(b) Roster: A responsible party shall maintain a roster of applicants and employees, accessible by AGE's director (or the director's designees), that includes all the following:

(i) The name of each applicant and employee.

(ii) The date the responsible party hired the employee.

(iii) The date the responsible party requested criminal records from BCII.

(iv) The date the responsible party received criminal records from BCII.

(v) A determination of whether the criminal records revealed that the applicant or employee committed a disqualifying offense(s).

(D) Background checks for volunteers in ombudsman positions: Because section 173.27 of the Revised Code excludes volunteers from the definitions of "applicant" and "employee," volunteers are not subject to the background check requirements in section 173.27 of the Revised Code or paragraph (C) of this rule when they apply to volunteer or after they become volunteers. A responsible party may conduct a criminal records check on a volunteer if the responsible party complies with rule 109:5-1-01 of the Administrative Code, but the check may only involve reviewing sealed records if the volunteer who is the subject of the check authorizes the responsible party to view sealed records according to division (D)(3) of section 2953.32 of the Revised Code.

Replaces: 173-14-14

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under: 119.03

Statutory Authority: 121.07, 173.01, 173.02, 173.16, 173.27; 42 U.S.C. 3025, 3058g; 45 C.F.R. 1321.9, 1324.11, 1324.13, 1324.15

Rule Amplifies: 109.572, 173.16, 173.27; 42 U.S.C. 3058g; 45 C.F.R. 1324.11

Prior Effective Dates: 07/11/1991, 12/27/2001, 12/28/2006, 02/15/2009, 01/01/2013, 04/01/2014, 02/01/2015, 08/01/2017, 04/01/2018, 02/14/2022, 08/01/2024