

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: OHIO DEPARTMENT OF AGING

Package Title: BACKGROUND CHECKS

Rule Numbers: OAC Chapter 173-9 and 173-14-14

Date: March 2, 2017, Revised April 14, 2017

Rule Types:

- ☒ 5-Year Review
- ☐ Rescinded
- ☐ New
- ☒ Amended
- ☐ No change

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the regulations in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

OVERVIEW

Currently, OAC Chapter 173-9 requires responsible parties to conduct background checks when considering hiring applicants or retaining employees in ombudsman positions or direct-care positions. ODA is proposing to amend the chapter to remove ombudsman language from the chapter, thereby leaving the chapter for just direct-care positions.

OAC173-14-14 is not subject to CSIO review, but is included in this business impact analysis because it is part of the same rule package.

SPECIFIC AMENDMENTS

ODA proposes to transfer all requirements in Chapter 173-9 related to ombudsman positions into OAC173-14-14.

ODA also proposes to add "~~Background checks for direct-care positions:~~" "Background checks: paid direct-care positions" to the beginning of each rule title. ODA's analysis of its website usage indicates the vast majority of people downloading copies of our rules do so by using search engines to find the rule. Giving the rules a chapter-like beginning to each title should make searching for our rules easier.

ODA also proposes to make non-substantive amendments to improve the rules.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

2. Please list the Ohio statute authorizing the Agency to adopt these regulations.

ORC §§ [109.572\(A\)\(3\)](#), [173.01](#), [173.02](#), [173.27](#), [173.38](#), [173.381](#), [173.391](#), and [173.392](#).

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

§§ 305(a)(1)(C) and 712(a)(5)(D) of the Older Americans Act of 1965 as amended by the Older Americans Act Reauthorization Act of 2016, 79 Stat. 210, 42 USC 3001; 42 CFR 460.68(a), 460.71(a)(1), and 460.71(a)(2); 45 CFR 1321.11.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

ODA is not exceeding any federal requirements.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The rule exists to comply with the state laws ODA listed in its response to BIA question #2.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

ODA monitors its designees for compliance.

ODA (and its designees) monitors providers for compliance.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

On March 2, 2017, ODA emailed the Ohio Association of Senior Centers, the Ohio Association of Area Agencies on Aging, LeadingAge Ohio, Ohio Health Care Association, Ohio Council for Home Care and Hospice, Catholic Social Services of the Miami Valley, Ohio Association of Medical Equipment Suppliers to (1) announce that ODA intends to amend OAC Chapter 173-9 to transfer ombudsman-position language to OAC173-14-14 and to start each rule title with "Background checks for direct-care positions"¹, (2) solicit their comments on (1), and (3) solicit their suggestions for improving the chapter.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

To the March 2, 2017 email, ODA received the following responses.

COMMENTS	ODA's RESPONSES
In General We are in complete agreement with separating the ombudsman position from the direct care worker position. <i>An AAA via Ohio Association of Area Agencies on Aging</i>	
In General We agree that separating the ombudsman from OAC Chapter 173-9 would be a good thing. It would not only shorten the existing rules, but we believe it would make it less confusing for service providers to determine what applies to them. When changes are made, will you be changing the term "consumer" to "individual" in the revised rule? <i>An AAA via Ohio Association of Area Agencies on Aging</i>	Although ODA has been replacing <i>consumer</i> with <i>individual</i> in certain rules in OAC Chapter 173-9 in the past few years, ODA must continue to use <i>consumer</i> in this chapter. ORC §§ 173.38 and 173.381 use <i>consumer</i>. Additionally, OAC Chapters 173-3, 173-4, and 173-14 use <i>consumer</i> and those chapters require the background checks required in these rules.

¹ ODA later determined to use "Background checks: paid direct-care positions."

COMMENTS	ODA's RESPONSES
173-9-04(B)(2)(a)(iii) Question: Why doesn't the agency employee section include the same info as in the ombudsman section as follows? (B)(2)(a)(iii) 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. <u>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.</u> Question: If the underlined section is added to the agency employee section, how often does the agency need to check the exclusionary databases? Not at all? Thank you for giving us the opportunity to review the ODA background check rules. <i>Beth Foster, Ohio Council for Home Care & Hospice</i>	ODA has amended the rule in a way that now includes the "rapback" clarification for direct-care positions. Enrolling in rapback involves also enrolling in ARCS. Responsible parties enrolling employees in ARCS and rapback will have ARCS and rapback review databases and check criminal records for their enrolled employees on a daily basis.
173-9-07.1 LeadingAge Ohio feels the changes you are suggesting will be helpful and we are in agreement with them. The only question we had was in first paragraph of rule 173-9-07.1 <i>Certifying or entering into a provider agreement with a self-employed provider who has a disqualifying offense on his or her criminal record</i> is a bit confusing but we got the point after several readings. We weren't sure if the language in the first paragraph would be read easier if (A) – (D) were bulleted? It is just a bit confusing. <i>Anne Shelley, LeadingAge Ohio</i>	Because actual paragraphs (A) to (D) are bulleted, today's Rule Authorizing Software (RAS3.0) does not allow bulleting the references to paragraphs (A) to (D) under the introductory paragraph.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Since January 1, 2013, ODA and the Depts. of Developmental Disabilities, Health, and Medicaid have based the periods of disqualification found in rules 173-9-07, 173-9-07.1, and 173-14-14 on the following research:

- Blumstein, A., and K. Nakamura, *Redemption in the Presence of Widespread Criminal Background Checks*, CRIMINOLOGY, Vol., 47, 327-359, (May, 2009). See also, <http://www.nij.gov/journals/263/redemption.htm> (last viewed on March 24, 2017). Blumstein and Nakamura also made a presentation of their research to the Ex-Offender Re-Entry Coalition on September 16, 2010. State staff on this project attended the presentation.
- *Scarlet Letters and Recidivism: Does an Old Crime Predict Future Offending?*, CRIMINOLOGY AND PUBLIC POLICY, Vol., 5, 493-522, (2006).
- *Enduring Risk: Does an Old Crime Predict Future Offending?*, CRIME AND DELINQUENCY, Vol., 53, 64-83, (2007).
- *When Do Ex-Offenders Become Like Non-Offenders?*, HARVARD JOURNAL OF CRIMINAL JUSTICE, Vol., 48, 473-487, (2009).

- *The Predictive Value of Criminal Background Checks: Do Age and Criminal History Affect Time To Redemption?*, CRIMINOLOGY, 27-60. Vol., 49, (2011).

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

ODA did not consider any alternative regulations. The rules must comply with ORC §§ 173.27, 173.38, or 173.381. Additionally, to provide employers in community-based long-term care with the same background-check standards in Ohio, ODA continues to maintain the requirements the Ohio Depts. of Aging, Developmental Disabilities, Health, and Medicaid agreed upon for our rules beginning on January 1, 2013.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

On one hand, ORC §§ 173.27, 173.38, or 173.381 require background checks regardless of the performance of the employer. On the other hand, the same statutes allowed ODA to adopt language allowing employers to hire applicants (or retain employees) with disqualifying criminal records if the applicant (or employee) meets the conditions detailed in OAC173-9-07, 173-9-07.1, or 173-14-14(C)(6).

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

ORC §§ [173.27](#), [173.38](#), [173.381](#), [173.391](#), and [173.392](#) only authorize ODA (*i.e.*, not any other state agency) to develop these rules.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Before the rules would take effect, ODA will post them on ODA's [website](#). ODA also sends an email to subscribers of our rule-notification service to feature the rules.

Through its regular monitoring activities, ODA and its designees will monitor providers for compliance. OAC [173-39-02](#) requires all providers to allow ODA (and its designees) to monitor.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

OAC Chapter 173-9: Responsible parties subject to this rule are those who provide direct care to consumers through ODA-administered programs. They are responsible for checking the backgrounds of applicants and employees unless exempted by statute or rule (cf. OAC173-9-02). Responsible parties provide many types direct care, including the following:

- | | |
|-----------------------------------|---------------------------------------|
| • Adult Day Service | • Waiver Nursing |
| • Chores (including pest control) | • Out-of-Home Respite |
| • Personal Care | • Home Care Attendant |
| • Homemaker | • Choices Home Care Attendant |
| • Enhanced Community Living | • Home Medical Equipment |
| • Independent Living Assistance | • Personal Emergency Response Systems |

- Social Work/Counseling
- Home Modification, Maintenance, and Repair
- Transportation
- Congregate Dining
- Home-Delivered Meals
- Nutrition Counseling
- Nutrition Education
- Nutrition Health Screening
- Grocery Shopping Assistance
- Grocery Ordering and Delivery
- Long-Term Care Consultations
- Case Management

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

The direct adverse impacts are fees. There indirect adverse impacts are lost jobs and administrative expenses.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

The direct adverse impacts are the \$22 fees that each responsible entity (*i.e.*, employer) pays to the Bureau of Criminal Investigation plus the impression costs that go to the fingerprint takers (*e.g.*, license agency, county sheriff's office, city police). For example, the Ohio Attorney General's online WebCheck® locator says that the Columbus Police Department charges \$42 for a criminal records check, which is \$22 for BCII plus \$20 for the the police department.²

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Ensuring the safety of consumers receiving goods and services through ODA-administered programs outweighs the costs associated with checking the backgrounds of paid applicants and employees who would (or already do) provide goods and services to the consumers.

Additionally, ORC§§ [173.27](#), [173.38](#), and [173.381](#) require ODA to adopt the rules.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

The rules treat all responsible parties the same, regardless of their size.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

ORC§[119.14](#) establishes the exemption for small businesses from penalties for first-time paperwork violations. ORC§119.14 does not override providers' need to conduct background checks pursuant to ORC§§ [173.27](#), [173.38](#), and [173.381](#).

18. What resources are available to assist small businesses with compliance of the regulation?

ODA does not discriminate between responsible parties based upon the size of their business or organization. Providers regulated by OAC Chapter 173-9 are typically small businesses according to ORC§119.14. ODA (and its designees) are

² [Webcheck Locations](#), online database, OFFICE OF THE OHIO ATTORNEY GENERAL, (last viewed on March 24, 2017).

Business Impact Analysis

available to help providers of all sizes with their questions. Any person may contact [Tom Simmons](#), ODA's policy development manager, with questions about the rule.

Additionally, ODA maintains an [online rules library](#) to help responsible parties find rules regulating them. Responsible parties may access the online library 24 hours per day, 365 days per year.

173-9-01

Background checks: direct-care position: **Introduction introduction and definitions.**

(A) Introduction: Chapter 173-9 of the Administrative Code implements sections ~~173.27,~~ 173.38~~7~~, and 173.381 of the Revised Code, which require responsible parties to review databases and check criminal records when hiring an applicant for, or retaining an employee in, a ~~paid ombudsman position or~~ paid direct-care position.

(B) Definitions for Chapter 173-9 of the Administrative Code:

(1) "Area agency on aging" has the same meaning as in section 173.14 of the Revised Code.

~~(2) "Applicant":~~

~~(a) For an ombudsman position, "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.~~

~~(b)~~(2) ~~For a direct-care position, "applicant"~~ "Applicant" means a person that a responsible party is giving final consideration for hiring into a paid direct-care position that is a full-time, part-time, or temporary position that involves ~~the furnishing of~~ providing goods or services to consumers or individuals through an ODA-administered program, even if an employment service refers the person to the responsible party. "Applicant" includes a person that ~~a~~ an individual or consumer has under final consideration for hiring as a ~~consumer-directed~~ participant-directed or self-directed provider. "Applicant" does not include a volunteer.

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

(4) "Check criminal records" means to conduct a criminal records check.

(5) "Community-based long-term care services" means community-based long-term care services that are provided under any ODA-administered program.

(6) "Consumer" means a person who receives community-based long-term care services through a program that ODA administers that does not require provider certification.

(7) "Criminal records" has the same meaning as "results of the criminal records

173-9-01

2

check," "results," and "report" in sections ~~173.27~~, 173.38, and 173.381 of the Revised Code when those sections use "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.

(8) "Criminal records check" ("check") means the criminal records check described in ~~section 109.572 of the Revised Code when a responsible party conducts the check to comply with sections 173.27~~, section 173.38; or 173.381 of the Revised Code and Chapter 173-9 of the Administrative Code.

(9) "Database reviews" means the database reviews that rules 173-9-03 and 173-9-03.1 of the Administrative Code requires.

(10) "Direct-care position":

(a) "Direct-care position" means an employment position in which an employee has either one or both of the following:

(i) In-person contact with one or more consumers.

(ii) Access to one or more consumers' personal property or records.

(b) "Direct-care position" does not include a position that solely involves transporting people while working for a county transit system, regional transit authority, or regional transit commission.

(11) "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.

~~(12) "Employee":~~

~~(a) For an ombudsman position, "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.~~

~~(b)~~ (12) For a direct-care position, "employee" "Employee" means a person that a responsible party hired into a paid direct-care position that is a full-time,

173-9-01

3

part-time, or temporary position that involves ~~the furnishing of~~ providing goods or services to consumers or individuals through an ODA-administered program, even if an employment service initially referred the person to the responsible party. "Employee" includes a ~~consumer-directed~~ participant-directed provider and a self-directed provider. "Employee" does not include a volunteer.

- (13) "FBI" means "federal bureau of investigation."
- (14) "Fire" has the same meaning as "terminate" in sections ~~173.27 and~~ section 173.38 of the Revised Code when the "terminate" regards firing an employee.
- (15) "Hire" has the same meaning as "employ" in sections ~~173.27 and~~ section 173.38 of the Revised Code when "employ" regards hiring an applicant.
- (16) "Individual" means a person who receives community-based long-term care services through a program that ODA administers that requires provider certification..
- ~~(16)~~(17) "Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code.
- ~~(17)~~(18) "ODA" means "the Ohio department of aging."
- ~~(18) "Ombudsman position" means a position that involves providing ombudsman services to residents and recipients, as defined in section 173.14 of the Revised Code. "Ombudsman position" includes the state long term care ombudsman and representatives of the office of the state long term care ombudsman.~~
- (19) "PASSPORT administrative agency" has the same meaning as in section 173.42 of the Revised Code.
- (20) "Provider" means a person or government entity that provides community-based long-term care services under an ODA-administered program.
- (21) "Release" has the same meaning as "terminate" in ~~sections 173.27 and~~ section 173.38 of the Revised Code when "terminate" regards releasing a conditionally-hired applicant.
- (22) "Request criminal records" means to request a criminal records check, unless

the context indicates that the request is of criminal records from the FBI.

(23) "Responsible party":

~~(a) When hiring an applicant for, or retaining an employee in, a paid ombudsman position as the state long-term care ombudsman, "responsible party" means ODA's director.~~

~~(b) 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.~~

~~(c) 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.~~

~~(d) When hiring an applicant for, or retaining an employee in, a paid ombudsman position in the regional program, "responsible party" means the regional program.~~

~~(e)~~(a) When hiring an applicant for, or retaining an employee in, a paid direct-care position, "responsible party" means the area agency on aging, PASSPORT administrative agency, provider, or sub-contractor.

~~(f)~~(b) When hiring an applicant for, or retaining an employee in, a paid direct-care position in a consumer-direction or self-direction arrangement, "responsible party" means the consumer.

~~(g)~~(c) When considering a self-employed applicant for ODA-certification under section 173.391 of the Revised Code or a self-employed person already ODA-certified section 173.391 of the Revised Code, "responsible party" means the ODA or the PASSPORT administrative agency.

~~(h)~~(d) When considering a self-employed bidder for a provider agreement under section 173.392 of the Revised Code or a self-employed person already in a provider agreement under section 173.392 of the Revised Code, "responsible party" means the area agency on aging.

(24) "Retain" has the same meaning as "continue to employ" in ~~sections 173.27 and~~ section 173.38 of the Revised Code.

- (25) "Reviewing databases" means the action involved in database reviews.
- (26) "Self-employed" means the state of working for one's self with no employees. Non-agency and independent providers are self-employed. Consumer-directed providers are not self-employed because the consumer is the employer of record.
- (27) "Sub-contractor" means a provider that enters into a contract with a responsible party to provide a component of one or more of the other responsible party's direct-care positions. "Sub-contractor" includes a party that directly supplies goods or services to a consumer on behalf of another responsible party. "Sub-contractor" does not include a party that indirectly supplies goods or services to a consumer by directly providing the goods or services to a responsible party.
- (28) "Volunteer" means a person who serves in ~~an ombudsman position or~~ a direct-care position without receiving, or expecting to receive, any form of remuneration other than reimbursement for actual expenses.
- (29) "Waiver agency" has the same meaning as in section 5164.342 of the Revised Code.

173-9-02

Background checks: direct-care positions:
~~Applicability~~applicability.

(A) Applicability: Chapter 173-9 of the Administrative Code (the chapter) applies to every ~~paid ombudsman position and~~ every paid direct-care position unless this rule states otherwise. (ODA defined "~~ombudsman position~~" and "direct-care position" in rule 173-9-01 of the Administrative Code.)

(B) Limited applicability: Although the chapter applies to any a person who is an applicant (pre-hire) for a paid direct-care position, a person who is an employee in one of the following paid direct-care positions is not required to undergo subsequent (post-hire) database reviews and criminal records checks:

(1) A direct-care position that only delivers home-delivered meals.

(2) A direct-care position that only has access to one or more consumers' personal records (e.g., a position in an office, kitchen, or central monitoring station).

(3) A direct-care position that only provides a one-time chore service, home maintenance, home modification, home repair, or pest control. If the person provides a subsequent episode of service to the same consumer or to another consumer who is enrolled in an ODA-administered program, the person shall undergo subsequent (post-hire) database reviews and criminal records checks.

(C) Inapplicability: The chapter does not apply to the following positions:

(1) A volunteer position.

(2) A position that solely involves transporting consumers while working for a county transit system, regional transit authority, or regional transit commission.

(3) A position that involves providing legal services.

(4) A position in a residential care facility.

(5) A position providing medicare-certified home health services.

(6) A position that only serves consumers who are enrolled in an ODM-administered medicaid waiver program.

(D) No implied factors: Whether a position is supervised or unsupervised, alone or never

alone, enters a home or never enters a home, regulated elsewhere or not regulated elsewhere is not a factor that determines if the chapter applies to the position.

- (E) Chief administrators: Requirements in the chapter for responsible parties of area agencies on aging, PASSPORT administrative agencies, agency providers, consumers, and agency sub-contractors to request, review, or retain criminal records are requirements of each responsible party's chief administrator or any person that the chief administrator designates for these tasks.

173-9-03

Background checks: direct-care positions: Reviewing reviewing databases (except for the self-employed).

(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 following six databases:

DATABASES TO REVIEW	
SAM	https://www.sam.gov/
OIG	http://exclusions.oig.hhs.gov/
Abuser Registry	https://its.prodapps.dodd.ohio.gov/ABR_Default.aspx
Sex-Offender Search	http://www.icrimewatch.net/index.php?AgencyID=55149&disc=
Offender Search	http://www.drc.ohio.gov/OffenderSearch/Search.aspx
Nurse-Aide Registry	https://odhgateway.odh.ohio.gov/nar/nar_registry_search.aspx

- (1) The United States general services administration's system for award management.
- (2) The office of inspector general of the United States department of health and human services' list of excluded individuals.
- (3) The department of developmental disabilities' online abuser registry that lists people cited for abuse, neglect, or misappropriation.
- (4) The Ohio attorney general's sex offender and child-victim offender database.
- (5) The department of rehabilitation and correction's database of inmates.
- (6) The department of health's state nurse aide registry. 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.

173-9-03

2

(B) When to review databases:

WHEN TO REVIEW DATABASES		
POSITIONS	APPLICANTS (PRE-HIRE)	EMPLOYEES (POST-HIRE)
Ombudsman position	Required	Required
Direct-care position: Only delivers meals	Required	Not required
Direct-care position: Only has access to consumers' personal records	Required	Not required
Direct-care position: Only provides a specified once-ever service	Required	Not required
Transportation position: If applying for, or employed by, a county transit system, regional transit authority, or regional transit commission	Not required	Not required
Transportation position: If applying for, or employed by, a provider other than a county transit system, regional transit authority, or regional transit commission, the position is a direct-care position	Required	Required
All direct-care positions not listed above	Required	Required

- (1) Applicants (pre-hire): The responsible party shall review each applicant's (pre-hire) status in the databases before conducting the criminal records check that rule 173-9-04 of the Administrative Code requires for applicants.
- (2) Employees (post-hire): The responsible party shall review each employee's (post-hire) status in the databases before conducting the criminal records

173-9-03

3

check that rule 173-9-04 of the Administrative Code requires for employees. Because rule 173-9-02 of the Administrative Code does not require criminal records checks on employees (post-hire) in three types of direct-care positions, the responsible party is not required to review databases on employees (post-hire) in the same three types of direct-care positions.

(C) Disqualifying status:

- (1) No responsible party shall hire an applicant or retain an employee if the applicant's or employee's status in the databases reveals the following that one or more of the databases in paragraphs (A)(1) to (A)(5) of this rule lists the applicant or employee or the database in paragraph (A)(6) of this rule lists the applicant or employee as a person who neglected or abused a long-term care facility resident or residential care facility resident or misappropriated such a resident's property.
- (2) 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.

- (D) Referrals from employment services: A responsible party is not required to review the databases if the applicant, or employee of a direct-care position was referred to the responsible party by an employment service that refers applicants to responsible parties to fill full-time, part-time, or temporary direct-care positions if the responsible party obtains copies of records from the employment service that verify that the applicant's or employee's status in the databases does not disqualify him or her.

173-9-03.1

Background checks: direct-care positions: Reviewing reviewing databases (for the self-employed).

(A) Databases to review: Any time this rule requires a responsible party to review a self-employed provider's status in databases, the responsible party shall review the following six databases:

DATABASES TO REVIEW	
SAM	https://www.sam.gov/
OIG	http://exclusions.oig.hhs.gov/
Abuser Registry	https://its.prodapps.dodd.ohio.gov/ABR_Default.aspx
Sex-Offender Search	http://www.icrimewatch.net/index.php?AgencyID=55149&disc=
Offender Search	http://www.drc.ohio.gov/OffenderSearch/Search.aspx
Nurse-Aide Registry	https://odhgateway.odh.ohio.gov/nar/nar_registry_search.aspx

- (1) The United States general services administration's system for award management.
- (2) The office of inspector general of the United States department of health and human services' list of excluded individuals.
- (3) The department of developmental disabilities' online abuser registry that lists people cited for abuse, neglect, or misappropriation.
- (4) The Ohio attorney general's sex offender and child-victim offender database.
- (5) The department of rehabilitation and correction's database of inmates.
- (6) The department of health's state nurse aide registry. 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:

WHEN TO REVIEW DATABASES		
SELF-EMPLOYED DIRECT-CARE POSITIONS	WHEN APPLYING TO BECOME ODA-CERTIFIED OR WHEN BIDDING FOR A PROVIDER AGREEMENT	AFTER BECOMING ODA-CERTIFIED OR WHEN ENTERING INTO A PROVIDER AGREEMENT
Only delivers meals	Required	Not required
Only has access to consumers' personal records	Required	Not required
Only provides a specified once-ever service	Required	Not required
All other self-employed direct-care positions not listed above	Required	Required

- (1) When the self-employed provider applies to become ODA-certified or bids for a provider agreement, the responsible party shall review the self-employed provider's status in the databases before checking the self-employed provider's criminal records.
- (2) After the self-employed provider is ODA-certified or has entered into a provider agreement, the responsible party may review the self-employed provider's status in the databases at any time. But, the responsible party shall review the self-employed provider's status in the databases no less often than each time that the responsible party conducts a criminal records check according to one of the schedules in rule 173-9-04.1 of the Administrative Code. If the self-employed provider provides services equivalent to one of the direct-care positions under paragraph (B) of rule 173-9-02 of the Administrative Code, the responsible party is not required to conduct subsequent databased reviews and criminal records checks after the self-employed provider becomes ODA-certified or has entered into a provider agreement.
- (C) Disqualifying status: No responsible party shall certify a self-employed provider to provide a direct-care service, enter into a provider agreement with a self-employed provider, fail to terminate a provider agreement with a self-employed provider, or fail to revoke a self-employed provider's certification, if the self-employed person's status in the databases reveals that one or more of the databases in paragraphs (A)(1) to (A)(5) of this rule lists the self-employed provider or the database in paragraph (A)(6) of this rule lists the self-employed provider as a person who

neglected or abused a long-term care facility resident or residential care facility resident or misappropriated such a resident's property.

173-9-04

Background checks direct-service positions: ~~When~~ when to check criminal records, inform applicants, charge fees, and use forms (except for the self-employed).

(A) Database reviews first: The responsible party shall conduct database reviews on each applicant (~~re-hire~~) (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 did not disqualify the applicant or employee, the responsible party shall conduct a criminal records check.

(B) When to check criminal records:

WHEN TO CHECK CRIMINAL RECORDS		
POSITION	CHECK WHEN APPLICANTS (PRE-HIRE)	CHECK WHEN EMPLOYEES (POST-HIRE)
Ombudsman position	Required	Required
Direct-care position: Only delivers meals	Required	Not required
Direct-care position: Only has access to consumers' personal records	Required	Not required
Direct-care position: Only provides a specified once-ever service	Required	Not required
Transportation position with a county transit system, regional transit authority, or regional transit commission.	Not required	Not required
Transportation position: other than a position with a county transit system, regional transit authority, or regional transit commission	Required	Required
All direct-care positions not listed above	Required	Required

START DATES & DEADLINES FOR CHECKING CRIMINAL RECORDS			
	START DATE	FIRST DEADLINE AFTER JANUARY 1, 2013	SUBSEQUENT DEADLINES
Applicants (pre-hire)	When applicant is under final	Fingerprinting before hiring the	Not applicable. (See rows for employees.)

173-9-04

2

	consideration for paid employment, but only if the database reviews don't disqualify the applicant	applicant and before the end of the sixty-day period of conditional hiring (if the responsible party utilized the conditional-hiring option in rule 173-9-05 of the Administrative Code)	
Employees (post-hire): Five-year schedule for pre-2008 hire dates	Any time, but only if the database reviews don't disqualify the employee	2013 hiring anniversary + 30 days	Every 5th-year hiring anniversary + 30 days
Employees (post-hire): Five-year schedule for 2008-present hire dates	Any time, but only if the database reviews don't disqualify the employee	First 5th-year hiring anniversary + 30 days	Every 5th-year hiring anniversary + 30 days
Employees (post-hire): Less-than five-year schedule	Any time, but only if the database reviews don't disqualify the employee	No deadline, so long as more frequent than every 5 years	No deadline, so long as more frequent than every 5 years

~~(1) Applicants (pre-hire):~~

~~(a) Ombudsman position: The responsible party shall conduct a criminal records check on each applicant.~~

~~(b)(1) Direct-care position:~~ Applicants (pre-hire): The responsible party shall conduct a criminal records check on each applicant. The responsible party shall do so even if paragraph (B) of rule 173-9-02 of the Administrative Code would not require the responsible party to check the person again after the responsible party hired the applicant.

~~(2) Employees (post-hire):~~

~~(a)(2) Ombudsman~~ Direct-care position: According to one of the following three schedules, the responsible party shall conduct a criminal records check on each employee at least once every five years:

~~(i)~~(a) Five-year schedule for pre-2008 hire dates: If the responsible party hired the employee before January 1, 2008, the responsible party shall conduct a criminal records check on the employee no later than thirty days after the 2013 anniversary of the employee's date of hire and no later than thirty days after each five-year anniversary after 2013. A responsible party that follows this schedule is not required to wait until the employee's anniversary to conduct a criminal records check. The responsible party has five years, plus thirty days, to conduct the next check.

~~(ii)~~(b) Five-year schedule for 2008-present hire dates: If the responsible party hired the employee on or after January 1, 2008, 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.

~~(iii)~~(c) 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.

~~(b) Direct care position: 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, unless the employee's direct care position is listed under paragraph (B) of rule 173-9-02 of the Administrative Code:~~

~~(i) Five-year schedule for pre-2008 hire dates: If the responsible party hired the employee before January 1, 2008, the responsible party shall conduct a criminal records check on the employee no later than thirty days after the 2013 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 anniversary to conduct a criminal records check. The responsible party has five years, plus thirty days, to conduct the next check.~~

~~(ii) Five-year schedule for 2008-present hire dates: If the responsible party hired the employee on or after January 1, 2008, 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.~~

~~(iii) 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.~~

- (3) Reverification: If any person has requested a criminal records check on an applicant or employee in the past year that, according to division (B)(1) of section 109.572 of the Revised Code, requires BCII to include sealed criminal records in the criminal records it returns to the person making the request, the responsible party may request a reverification of the criminal record from BCII. The reverification of the criminal record has the same validity as the criminal records ~~obtained~~ received during the past year.

(C) Sealed records: Division (B)(1) of section 109.572 of the Revised Code requires BCII to include sealed criminal records in the criminal records that it returns to responsible parties.

~~(E)~~(D) When to check the FBI's criminal records:

- (1) Residency: If an applicant or employee does not provide the responsible party with evidence that he or she has been a resident of Ohio for the five-year period immediately preceding the date the responsible party must request a criminal records check, or if the applicant or employee does not provide the responsible party with evidence that BCII has requested his or her criminal records from the FBI within the five-year period immediately preceding the date the responsible party requests the criminal records check, the responsible party shall request that BCII obtain criminal records from the FBI as part of the criminal records check.
- (2) Will of the responsible party: If an applicant or employee provides the responsible party with evidence that he or she has been a resident of Ohio for the five-year period immediately preceding the date the responsible party requests the criminal records check, the responsible party may request that

173-9-04

5

BCII obtain criminal records from the FBI as part of the criminal records check.

~~(D)~~(E) Inform applicant: When an applicant initially applies for ~~a paid ombudsman position or~~ a paid direct-care position (or when an employment service initially refers an applicant to a responsible party), the responsible party shall inform the applicant of the following:

(1) If the responsible party gives the applicant final consideration for hiring into the position, the following shall happen:

(a) The responsible party shall review the applicant's status in the databases listed in rule 173-9-03 of the Administrative Code.

(b) Unless the database reviews reveal that the responsible party shall not hire the applicant, the responsible party shall conduct a criminal records check and the applicant shall provide a set of his or her ~~fingerprint impressions~~ fingerprints as part of the ~~the~~ criminal records check.

(2) If the responsible party hires the applicant, as a condition to retain the position, the responsible party shall conduct post-hire database reviews and criminal records checks according to one of the three schedules listed under paragraph (B)(2) of this rule.

(3) If the responsible party intends to charge the applicant the fees ~~for checking criminal records, the responsible party shall inform the applicant of the fees that~~ divisions (C)(2) and (C)(3) of section 109.572 of the Revised Code authorize ~~for checking criminal records, the responsible party shall inform the~~ applicant of the fees at the time of application.

~~(E)~~(F) Investigation fees:

(1) The responsible party shall pay BCII the fees that divisions (C)(2) and (C)(3) of section 109.572 of the Revised Code authorize for each criminal records check.

(2) The responsible party may charge the applicant a fee for checking criminal records so long as the fee does not exceed the amount the responsible party pays to BCII, but only if both of the following apply:

(a) At the time of initial application, the responsible party informed the

applicant of the fee's amount and that the responsible party would not hire the applicant if the applicant did not pay the fee.

- (b) The medicaid program does not pay the responsible party for the fee it pays to BCII.

~~(F)~~(G) Forms: Unless the applicant or employee follows the procedures that BCII established in rule 109:5-1-01 of the Administrative Code for providing ~~fingerprint impressions~~ fingerprints electronically and requesting criminal records electronically, the responsible party shall complete the following two tasks:

- (1) The responsible party shall provide each applicant or employee with the form(s) that BCII requires in division (C)(1) of section 109.572 of the Revised Code.
- (2) The responsible party shall obtain the completed fingerprints and forms, then forward them to BCII for processing.

~~(G)~~(H) Referrals from employment services: A responsible party is not required to request a criminal records check on an applicant or employee that an employment service refers to the responsible party to fill a full-time, part-time, or temporary direct-care position if the employment service satisfies one of the two following criteria:

- (1) The responsible party ~~obtains~~ receives copies of records from the employment service that verify the following two items:
 - (a) The employment service reviewed databases and the applicant's or employee's status in the databases and the status did not did not disqualify him or her.
 - (b) The employment service ~~obtained~~ received the applicant's criminal record less than a year before the employment service referred the applicant or employee to the responsible party and the applicant's criminal record did not list a disqualifying offense.
- (2) The responsible party conditionally hires a referred applicant according to the requirements for conditionally hiring referred applicants in rule 173-9-05 of the Administrative Code.

173-9-04.1

Background checks: direct-service positions: When to check criminal records, pay fees, and use forms (for the self-employed).

(A) Database reviews first: The responsible party shall review databases on a self-employed provider before checking the self-employed provider's criminal records. If the database reviews disqualify the self-employed provider, the responsible party shall not conduct a criminal records check. If the database reviews did not disqualify the self-employed provider, the responsible party shall conduct a criminal records check.

(B) When to check criminal records:

WHEN TO CHECK CRIMINAL RECORDS		
SELF-EMPLOYED DIRECT-CARE POSITIONS	CHECK WHEN THE SELF-EMPLOYED PROVIDER APPLIES TO BECOME ODA-CERTIFIED OR BIDS FOR A PROVIDER AGREEMENT	CHECK AFTER THE SELF-EMPLOYED PROVIDER BECOMES ODA-CERTIFIED OR HAS ENTERED INTO A PROVIDER AGREEMENT
Only delivers meals	Required	Not required
Only has access to consumers' personal records	Required	Not required
Only provides a specified once-ever service	Required	Not required
All other self-employed direct-care positions not listed above	Required	Required

START DATES & DEADLINES FOR CHECKING CRIMINAL RECORDS			
	START DATE	FIRST DEADLINE AFTER JANUARY 1, 2013	SUBSEQUENT DEADLINES
Before the self-employed provider applied to become an	Before the self-employed provider applied to become an	Fingerprinting before ODA certifies the self-employed provider or before an	Not applicable (See rows below)

ODA-certified provider or before the self-employed provider bid for a provider agreement	ODA-certified provider or before the self-employed provider bid for a provider agreement	AAA enters into a provider agreement with the self-employed provider	
Five-year schedule if the self-employed provider became an ODA-certified provider or entered into a provider agreement before 2008	Any time, but only if the database reviews don't disqualify the self-employed provider	2013 anniversary of certification or agreement + 30 days	Every 5th-year anniversary of certification or agreement + 30 days
Five-year schedule if the self-employed provider became an ODA-certified provider or entered into a provider agreement in 2008 or a later date	Any time, but only if the database reviews don't disqualify the self-employed provider	First 5th-year anniversary of certification or agreement + 30 days	Every 5th-year anniversary of certification or agreement + 30 days
Less-than five-year schedule	Any time, but only if the database reviews don't disqualify the self-employed provider	No deadline, so long as more frequent than every 5 years	No deadline, so long as more frequent than every 5 years

- (1) When a self-employed provider applies to become ODA-certified, or before bidding for a provider agreement, the responsible party shall check the self-employed provider's criminal records.
- (2) After becoming ODA-certified, or after entering into a provider agreement, the responsible party shall check the self-employed provider's criminal records at least once every five years, unless the self-employed provider's direct-care position is listed under paragraph (B) of rule 173-9-02 of the Administrative Code:
 - (a) Five-year schedule (pre-2008): If the self-employed provider became ODA-certified provider or entered into a provider agreement with ODA (or an area agency on aging) before January 1, 2008, the responsible party shall conduct a criminal records check on the self-employed

provider no later than thirty days after the 2013 anniversary of the self-employed provider's certification or provider agreement, and no later than thirty days after each anniversary every five years after 2013. If the self-employed provider serves consumers both as an ODA-certified provider and through a provider agreement, the anniversary date is the anniversary of whichever occurred first: the certification or the agreement. A responsible party that follows this schedule is not required to wait until the self-employed provider's anniversary to conduct a criminal records check.

(b) Five-year schedule (2008-present): If the self-employed provider became an ODA-certified provider or entered into a provider agreement with ODA (or an area agency on aging) on or after January 1, 2008, the responsible party shall conduct a criminal records check on the self-employed provider no later than thirty days after the fifth anniversary of the self-employed provider's certification or provider agreement and no later than thirty days after each five-year anniversary. If the self-employed provider serves consumers both as an ODA-certified provider and through a provider agreement, the anniversary date is the anniversary of whichever occurred first: the certification or the agreement. A responsible party that follows this schedule is not required to wait until the self-employed provider's five-year anniversary to conduct a criminal records check.

(c) Less-than-five-year schedule: The responsible party may conduct criminal records checks on a self-employed provider more frequently than every five years. If the responsible party checks more frequently than every five years, the responsible party is not responsible for conducting 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.

(3) Reverification: If a responsible party ~~has obtained~~ received criminal records on the self-employed provider during the past year, the responsible party may request a reverification of the criminal record from BCII. The reverification of the criminal record has the same validity as the criminal records ~~obtained~~ received during the past year.

(C) Sealed records: Division (B)(1) of section 109.572 of the Revised Code requires BCII to include sealed criminal records in its criminal records reports for criminal records checks conducted under section 173.381 of the Revised Code.

~~(C)~~(D) When to check the FBI's criminal records: If a self-employed provider has not been a resident of Ohio for the five-year period immediately preceding the date the responsible party must check criminal records, the responsible party shall request that BCII also obtain the FBI's criminal records.

~~(D)~~(E) Investigation fees:

- (1) The responsible party shall pay to BCII the fees that divisions (C)(2) and (C)(3) of section 109.572 of the Revised Code authorize for each criminal records check.
- (2) The responsible party may charge the self-employed provider a fee for checking criminal records so long as the fee does not exceed the amount the responsible party pays to BCII.

~~(E)~~(F) Forms: Unless the procedures that BCII established in rule 109:5-1-01 of the Administrative Code require providing ~~fingerprint impressions~~ fingerprints electronically and requesting criminal records electronically, the responsible party shall complete the following two tasks:

- (1) The responsible party shall use the form(s) that BCII requires in division (C)(1) of section 109.572 of the Revised Code.
- (2) The responsible party shall forward the completed fingerprints and forms to BCII for processing.

173-9-05

Background checks: direct-care positions: Conditional conditional hiring.

(A) Applicability:

- (1) This rule addresses ~~the conditional hiring of applicants for paid ombudsman positions;~~ the conditional hiring of applicants for paid direct-care positions with agency providers or with consumers through consumer-directed arrangements; the reasons to release conditionally-hired applicants; and the hiring of released applicants.
- (2) This rule does not require employees who hold ~~ombudsman positions or~~ paid direct-care positions to enter a conditional status when they undergo post-hire criminal records checks.
- (3) This rule does not authorize a responsible party to offer a conditional status to self-employed applicants for ODA certification or self-employed bidders on provider agreements.

(B) Sixty-day period (no referral from an employment service): A responsible party may conditionally hire an applicant for up to sixty days while it waits for the applicant's criminal records, but only if the responsible party complies with the following ~~conditions~~ requirements:

- (1) Database reviews: The responsible party shall not conditionally hire an applicant unless the responsible party conducted database reviews and the applicant's status in the databases was not disqualifying.
- (2) Criminal records check: The responsible party shall not conditionally hire an applicant unless the responsible party requests a criminal records check before the following deadlines:
 - (a) "WebCheck": If the responsible party requires the applicant to provide his or her fingerprints directly to BCII by using "WebCheck," the responsible party shall not conditionally hire the applicant until the applicant provides his or her fingerprints to a "WebCheck" vendor.
 - (b) Fingerprint impression sheet: If the responsible party does not require the applicant to provide his or her fingerprints directly to BCII by using "WebCheck," the responsible party shall not conditionally hire the applicant until the responsible party receives the applicant's fingerprints on a completed fingerprint impression sheet. If the responsible party conditionally hires the applicant after obtaining the fingerprint

173-9-05

2

impression sheet, the responsible party shall provide the sheet to BCII no later than five business days after the responsible party conditionally hires the applicant.

(C) Sixty-day period (referral from an employment service):

(1) Forward letter to responsible party: If an employment service refers an applicant to the responsible party, the responsible party may conditionally hire an applicant into a paid direct-care position for up to sixty days, but only if the employment service (or the applicant) forwards a letter to the responsible party that the employment service printed on its letterhead, that a designated official of the employment service dated and signed, and that verifies the following five items:

(a) The employment service conducted database reviews and the applicant's status in the databases and the status did not disqualify him or her.

(b) The employment service requested the applicant's criminal record from BCII.

(c) The requested criminal records check is to include a determination of whether the applicant has been convicted of, or pleaded guilty to, a disqualifying offense.

(d) The employment ~~services~~ service has not, as of the date of the letter, received the applicant's criminal record from BCII.

(e) The employment service will promptly forward a copy of the criminal record to the responsible party when the employment service ~~obtains~~ receives it.

(2) Forward criminal records to responsible party: If a responsible party conditionally hires an applicant that an employment service referred to the responsible party, the employment service shall promptly forward the criminal records to the responsible party when the employment service ~~obtains~~ receives the criminal records.

(D) Three reasons to release an applicant:

(1) Sixty-day period ends:

- (a) Only BCII check required: The responsible party shall release the conditionally-hired applicant from a ~~paid ombudsman position or~~ paid direct-care position if more than sixty days passed since the day the responsible party requested a criminal records and the responsible party has not yet ~~obtained~~ received the criminal records.
- (b) BCII and FBI checks required: The responsible party is not required to release the conditionally-hired applicant if more than sixty days passed since the responsible party requested criminal records from the FBI and the responsible party has not yet ~~obtained~~ received the FBI's criminal records, but only if section ~~173.27 or~~ 173.38 of the Revised Code required the responsible party to request criminal records from the FBI, and one of the following two conditions exist:
 - (i) The responsible party ~~obtained~~ received criminal records from BCII before the sixty-day period ended and the criminal records from BCII did not list a disqualifying offense.
 - (ii) The responsible party ~~obtained~~ received criminal records from BCII before the sixty-day period ended and the criminal records from BCII listed a disqualifying offense, but the terms of rule 173-9-07 of the Administrative Code would allow the responsible party to hire the applicant, and the responsible party would be willing to hire the applicant under the terms of rule 173-9-07 of the Administrative Code if the forthcoming criminal records from the FBI would not prohibit the responsible party from doing so.
- (2) Disqualifying offense on record: The responsible party shall release the conditionally-hired applicant if the applicant's criminal record lists a disqualifying offense, unless the responsible party is able and willing to hire the applicant under the terms of rule 173-9-07 of the Administrative Code. If the responsible party is unable or unwilling to hire an applicant with a disqualifying offense on his or her criminal record, the responsible party shall release the conditionally-hired applicant regardless of the day during the sixty-day period that the responsible party ~~obtained~~ received the criminal records.
- (3) Deception: If a conditionally-hired applicant made any attempt to deceive the responsible party about his or her criminal record, the attempt is just cause for the responsible party to release the conditionally-hired applicant.
- (E) Hiring released applicants: If a responsible party released a conditionally-hired

applicant to comply with the sixty-day limit in paragraph (D)(1)(a) of this rule, the responsible party may resume hiring the released applicant after the responsible party ~~obtains~~ receives the criminal records if either one of the following two conditions exist:

- (1) The applicant's criminal record does not list a disqualifying offense.
- (2) The applicant's criminal record lists a disqualifying offense, but the responsible party is able and willing to hire the applicant under the terms of rule 173-9-07 of the Administrative Code.

173-9-06

Background checks: direct-care positions: Disqualifying disqualifying offenses.

(A) Except as ~~set forth~~ established in rule 173-9-07 or 173-9-07.1 of the Administrative Code, no responsible party shall hire an applicant, retain an employee, certify a self-employed provider, fail to revoke a self-employed person's certification, enter into ~~a provider~~ an AAA-provider agreement with a self-employed provider, or fail to terminate a self-employed provider's ~~provider~~ AAA-provider agreement, if the applicant, employee, or self-employed provider was convicted of, or pleaded guilty to, a violation of any of the following sections of the Revised Code:

- (1) 959.13 (cruelty to animals);
- (2) 959.131 (prohibitions concerning companion animals);
- (3) 2903.01 (aggravated murder);
- (4) 2903.02 (murder);
- (5) 2903.03 (voluntary manslaughter);
- (6) 2903.04 (involuntary manslaughter);
- (7) 2903.041 (reckless homicide);
- (8) 2903.11 (felonious assault);
- (9) 2903.12 (aggravated assault);
- (10) 2903.13 (assault);
- (11) 2903.15 (permitting child abuse);
- (12) 2903.16 (failing to provide for a functionally-impaired person);
- (13) 2903.21 (aggravated menacing);
- (14) 2903.211 (menacing by stalking);
- (15) 2903.22 (menacing);

173-9-06

2

- (16) 2903.34 (patient abuse and neglect);
- (17) 2903.341 (patient endangerment);
- (18) 2905.01 (kidnapping);
- (19) 2905.02 (abduction);
- (20) 2905.04 (child stealing, as it existed before July 1, 1996);
- (21) 2905.05 (criminal child enticement);
- (22) 2905.11 (extortion);
- (23) 2905.12 (coercion);
- (24) 2905.32 (trafficking in persons);
- (25) 2905.33 (unlawful conduct with respect to documents);
- (26) 2907.02 (rape);
- (27) 2907.03 (sexually battery);
- (28) 2907.04 (unlawful sexual conduct with a minor, formerly corruption of a minor);
- (29) 2907.05 (gross sexual imposition);
- (30) 2907.06 (sexual imposition);
- (31) 2907.07 (importuning);
- (32) 2907.08 (voyeurism);
- (33) 2907.09 (public indecency);
- (34) 2907.12 (felonious sexual penetration, as it existed before July 1, 1996);

- (35) 2907.21 (compelling prostitution);
- (36) 2907.22 (promoting prostitution);
- (37) 2907.23 (enticement or solicitation to patronize a prostitute; procurement of a prostitute for another);
- (38) 2907.24 (soliciting, engaging in solicitation after a positive HIV test);
- (39) 2907.25 (prostitution);
- (40) 2907.31 (disseminating matter harmful to juveniles);
- (41) 2907.32 (pandering obscenity);
- (42) 2907.321 (pandering obscenity involving a minor);
- (43) 2907.322 (pandering sexually-oriented matter involving a minor);
- (44) 2907.323 (illegal use of a minor in nudity-oriented material or performance);
- (45) 2907.33 (deception to obtain matter harmless to juveniles);
- (46) 2909.02 (aggravated arson);
- (47) 2909.03 (arson);
- (48) 2909.04 (disrupting public services);
- (49) 2909.22 (soliciting or providing support for act of terrorism);
- (50) 2909.23 (making terroristic threat);
- (51) 2909.24 (terrorism);
- (52) 2911.01 (aggravated robbery);
- (53) 2911.02 (robbery);

173-9-06

4

- (54) 2911.11 (aggravated burglary);
- (55) 2911.12 (burglary);
- (56) 2911.13 (breaking and entering);
- (57) 2913.02 (theft);
- (58) 2913.03 (unauthorized use of a vehicle);
- (59) 2913.04 (unauthorized use of computer, cable, or telecommunication property);
- (60) 2913.05 (telecommunications fraud);
- (61) 2913.11 (passing bad checks);
- (62) 2913.21 (misuse of credit cards);
- (63) 2913.31 (forgery, forging identification cards);
- (64) 2913.32 (criminal simulation);
- (65) 2913.40 (medicaid fraud);
- (66) 2913.41 (defrauding a rental agency or hostelry);
- (67) 2913.42 (tampering with records);
- (68) 2913.43 (securing writings by deception);
- (69) 2913.44 (personating an officer);
- (70) 2913.441 (unlawful display of law enforcement emblem);
- (71) 2913.45 (defrauding creditors);
- (72) 2913.46 (illegal use of SNAP or WIC program benefits);

173-9-06

5

- (73) 2913.47 (insurance fraud);
- (74) 2913.48 (workers' compensation fraud);
- (75) 2913.49 (identify fraud);
- (76) 2913.51 (receiving stolen property);
- (77) 2917.01 (inciting to violence);
- (78) 2917.02 (aggravated riot);
- (79) 2917.03 (riot);
- (80) 2917.31 (inducing panic);
- (81) 2919.12 (unlawful abortion);
- (82) 2919.121 (unlawful abortion upon minor);
- (83) 2919.123 (unlawful distribution of an abortion-inducing drug);
- (84) 2919.22 (endangering children);
- (85) 2919.23 (interference with custody);
- (86) 2919.24 (contributing to unruliness or delinquency of child);
- (87) 2919.25 (domestic violence);
- (88) 2921.03 (intimidation);
- (89) 2921.11 (perjury);
- (90) 2921.12 (tampering with evidence);
- (91) 2921.13 (falsification, falsification in a theft offense, falsification to purchase a firearm, or falsification to obtain a concealed handgun license);

173-9-06

6

- (92) 2921.21 (compounding a crime);
- (93) 2921.24 (disclosure of confidential information);
- (94) 2921.32 (obstructing justice);
- (95) 2921.321 (assaulting or harassing a police dog, horse, or service animal);
- (96) 2921.34 (escape);
- (97) 2921.35 (aiding escape or resistance to lawful authority);
- (98) 2921.36 (illegal conveyance of weapons, drugs or other prohibited items onto grounds of detention facility or institution);
- (99) 2921.51 (impersonation of peace officer);
- (100) 2923.01 (conspiracy, related to another disqualifying offense);
- (101) 2923.02 (attempt to commit an offense, related to another disqualifying offense);
- (102) 2923.03 (complicity, related to another disqualifying offense);
- (103) 2923.12 (carrying concealed weapons);
- (104) 2923.122 (illegal conveyance or possession of deadly weapon or dangerous ordnance in a school safety zone, illegal possession of an object indistinguishable from a firearm in a school safety zone);
- (105) 2923.123 (illegal conveyance, possession, or control of deadly weapon or ordnance into a courthouse);
- (106) 2923.13 (having weapons while under disability);
- (107) 2923.161 (improperly discharging a firearm at or into a habitation or school);
- (108) 2923.162 (discharge of firearm on or near prohibited premises);

173-9-06

7

- (109) 2923.21 (improperly furnishing firearms to minor);
- (110) 2923.32 (engaging in a pattern of corrupt activity);
- (111) 2923.42 (participating in criminal gang);
- (112) 2925.02 (corrupting another with drugs);
- (113) 2925.03 (trafficking in drugs);
- (114) 2925.04 (illegal manufacture of drugs or cultivation of marijuana);
- (115) 2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs);
- (116) 2925.05 (funding of drug or marijuana trafficking);
- (117) 2925.06 (illegal administration or distribution of anabolic steroids);
- (118) 2925.09 (illegal administration, dispensing, distribution, manufacture, possession, selling, or using of any dangerous veterinary drug);
- (119) 2925.11 (possession of drugs);
- (120) 2925.13 (permitting drug abuse);
- (121) 2925.14 (illegal use, possession, dealing, selling, or advertising of drug paraphernalia);
- (122) 2925.141 (illegal use or possession of marihuana drug paraphernalia);
- (123) 2925.22 (deception to obtain dangerous drugs);
- (124) 2925.23 (illegal processing of drug documents);
- (125) 2925.24 (tampering with drugs);
- (126) 2925.36 (dispensing drug samples);

- (127) 2925.55 (unlawful purchase of a pseudoephedrine product, underage purchase of a pseudoephedrine product, using false information to purchase a pseudoephedrine product, improper purchase of a pseudoephedrine product);
 - (128) 2925.56 (unlawfully selling a pseudoephedrine product; unlawfully selling a pseudoephedrine product to a minor; improper sale of a pseudoephedrine product);
 - (129) 2927.12 (ethnic intimidation); or,
 - (130) 3716.11 (placing harmful objects in food or confection).
- (B) Except as set forth in rule 173-9-07 or 173-9-07.1 of the Administrative Code, no responsible party shall hire an applicant, retain an employee, certify a self-employed provider, fail to revoke a self-employed provider's certification, enter into a provider agreement with a self-employed provider, or fail to terminate a provider agreement with a self-employed provider, if the applicant, employee, or self-employed provider was convicted of a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described in paragraph (A) of this rule.

173-9-07

Background checks: direct-care positions: Hiring 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 an exclusionary period under paragraph (A) of this rule, limited grandfathering under paragraph (B) of this rule, obtaining a certificate under paragraph (C) of this rule, or obtaining a pardon under paragraph (D) of this rule.

(A) Disqualifying offense exclusionary periods: ~~Except as set forth in paragraphs (B), (C) and (D) of this rule, a~~ Δ responsible party may hire an applicant or retain an employee who was convicted of, or pleaded guilty to, an offense listed in rule 173-9-06 of the Administrative Code unless an exclusionary period in paragraph (A)(1), (A)(2), (A)(3), or (A)(4) of this rule prohibits hiring the applicant or retaining the employee.

(1) Tier I: permanent exclusion: No responsible party shall hire an applicant or retain an employee if the applicant or employee was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code:

- (a) 2903.01 (aggravated murder);
- (b) 2903.02 (murder);
- (c) 2903.03 (voluntary manslaughter);
- (d) 2903.11 (felonious assault);
- (e) 2903.15 (permitting child abuse);
- (f) 2903.16 (failing to provide for a functionally-impaired person);
- (g) 2903.34 (patient abuse or neglect);
- (h) 2903.341 (patient endangerment);
- (i) 2905.01 (kidnapping);
- (j) 2905.02 (abduction);
- (k) 2905.32 (human trafficking);

173-9-07

2

- (l) 2905.33 (unlawful conduct with respect to documents);
- (m) 2907.02 (rape);
- (n) 2907.03 (sexual battery);
- (o) 2907.04 (unlawful sexual conduct with a minor, formerly corruption of a minor);
- (p) 2907.05 (gross sexual imposition);
- (q) 2907.06 (sexual imposition);
- (r) 2907.07 (importuning);
- (s) 2907.08 (voyeurism);
- (t) 2907.12 (felonious sexual penetration);
- (u) 2907.31 (disseminating matter harmful to juveniles);
- (v) 2907.32 (pandering obscenity);
- (w) 2907.321 (pandering obscenity involving a minor);
- (x) 2907.322 (pandering sexually-oriented matter involving a minor);
- (y) 2907.323 (illegal use of a minor in nudity-oriented material or performance);
- (z) 2909.22 (soliciting or providing support for an act of terrorism);
- (aa) 2909.23 (making terroristic threats);
- (bb) 2909.24 (terrorism);
- (cc) 2913.40 (medicaid fraud);

- (dd) If related to another offense under paragraph (A)(1) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity);
- (ee) A conviction related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct involving a federal or state-funded program, excluding the disqualifying offenses set forth in section 2913.46 (illegal use of SNAP or WIC program benefits) and paragraph (A)(2)(a)(xiii) of this rule; or,
- (ff) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described in paragraphs (A)(1)(a) to (A)(1)(ee) of this rule.

(2) Tier II: ten-year exclusionary period:

- (a) No responsible party shall hire an applicant or retain an employee for a period of ten years from the date the applicant or employee was fully discharged from all imprisonment, probation, or parole, if the applicant or employee was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code:
 - (i) 2903.04 (involuntary manslaughter);
 - (ii) 2903.041 (reckless homicide);
 - (iii) 2905.04 (child stealing, as it existed before July 1, 1996);
 - (iv) 2905.05 (child enticement);
 - (v) 2905.11 (extortion);
 - (vi) 2907.21 (compelling prostitution);
 - (vii) 2907.22 (promoting prostitution);
 - (viii) 2907.23 (enticement or solicitation to patronize a prostitute; procurement of a prostitute for another);
 - (ix) 2909.02 (aggravated arson);

- (x) 2909.03 (arson);
- (xi) 2911.01 (aggravated robbery);
- (xii) 2911.11 (aggravated burglary);
- (xiii) 2913.46 (illegal use of SNAP or WIC program benefits);
- (xiv) 2913.48 (worker's compensation fraud);
- (xv) 2913.49 (identity fraud);
- (xvi) 2917.02 (aggravated riot);
- (xvii) 2923.12 (carrying concealed weapons);
- (xviii) 2923.122 (illegal conveyance or possession of deadly weapon or dangerous ordnance in a school safety zone, illegal possession of an object indistinguishable from a firearm in a school safety zone);
- (xix) 2923.123 (illegal conveyance, possession, or control of deadly weapon or ordnance into a courthouse);
- (xx) 2923.13 (having weapons while under disability);
- (xxi) 2923.161 (improperly discharging a firearm at or into a habitation or school);
- (xxii) 2923.162 (discharge of firearm on or near prohibited premises);
- (xxiii) 2923.21 (improperly furnishing firearms to a minor);
- (xxiv) 2923.32 (engaging in a pattern of corrupt activity);
- (xxv) 2923.42 (participating in a criminal gang);
- (xxvi) 2925.02 (corrupting another with drugs);

(xxvii) 2925.03 (trafficking in drugs);

(xxviii) 2925.04 (illegal manufacture of drugs or cultivation of marijuana);

(xxix) 2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs)

(xxx) 3716.11 (placing harmful or hazardous objects in food or confection);

(xxxi) If related to another offense under paragraph (A)(2)(a) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or,

(xxxii) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described under paragraphs (A)(2)(a)(i) to (A)(2)(a)(xxxi) of this rule.

(b) An applicant or employee is subject to a fifteen-year exclusionary period if the applicant, or employee was convicted of multiple disqualifying offenses, including an offense listed in paragraph (A)(2)(a) of this rule, and another offense or offenses listed in paragraph (A)(2)(a), (A)(3)(a), or (A)(4)(a) of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act.

(3) Tier III: seven-year exclusionary period:

(a) No responsible party shall hire an applicant or retain an employee for a period of seven years from the date the applicant or employee was fully discharged from all imprisonment, probation, or parole, if the applicant or employee was convicted of, or pleaded guilty to, any offense in any of the following sections of the Revised Code:

(i) 959.13 (cruelty to animals);

(ii) 959.131 (prohibitions concerning companion animals);

- (iii) 2903.12 (aggravated assault);
- (iv) 2903.21 (aggravated menacing);
- (v) 2903.211 (menacing by stalking);
- (vi) 2905.12 (coercion);
- (vii) 2909.04 (disrupting public services);
- (viii) 2911.02 (robbery);
- (ix) 2911.12 (burglary);
- (x) 2913.47 (insurance fraud);
- (xi) 2917.01 (inciting to violence);
- (xii) 2917.03 (riot);
- (xiii) 2917.31 (inducing panic);
- (xiv) 2919.22 (endangering children);
- (xv) 2919.25 (domestic violence);
- (xvi) 2921.03 (intimidation);
- (xvii) 2921.11 (perjury);
- (xviii) 2921.13 (falsification, falsification in a theft offense, falsification to purchase a firearm, or falsification to obtain a concealed handgun license);
- (xix) 2921.34 (escape);
- (xx) 2921.35 (aiding escape or resistance to lawful authority);

173-9-07

7

(xxi) 2921.36 (illegal conveyance of weapons, drugs, or other prohibited items onto the grounds of a detention facility or institution);

(xxii) 2925.05 (funding drug trafficking);

(xxiii) 2925.06 (illegal administration of distribution of anabolic steroids);

(xxiv) 2925.24 (tampering with drugs);

(xxv) 2927.12 (ethnic intimidation);

(xxvi) If related to another offense under paragraph (A)(3)(a) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or,

(xxvii) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described under paragraphs (A)(3)(a)(i) to (A)(3)(a)(xxvii) of this rule.

(b) An applicant or employee is subject to a ten-year exclusionary period if the applicant or employee was convicted of multiple disqualifying offenses, including an offense listed in paragraph (A)(3)(a) of this rule, and another offense or offenses listed in paragraph (A)(3)(a) or (A)(4)(a) of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act.

(4) Tier IV: five-year exclusionary period:

(a) No responsible party shall hire an applicant or retain an employee for a period of five years from the date the applicant or employee was fully discharged from all imprisonment, probation, or parole, if the applicant or employee was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code:

(i) 2903.13 (assault);

- (ii) 2903.22 (menacing);
- (iii) 2907.09 (public indecency);
- (iv) 2907.24 (soliciting, engaging in solicitation after a positive HIV test);
- (v) 2907.25 (prostitution);
- (vi) 2907.33 (deception to obtain matter harmful to juveniles);
- (vii) 2911.13 (breaking and entering);
- (viii) 2913.02 (theft);
- (ix) 2913.03 (unauthorized use of a vehicle);
- (x) 2913.04 (unauthorized use of computer, cable, or telecommunication property);
- (xi) 2913.05 (telecommunications fraud);
- (xii) 2913.11 (passing bad checks);
- (xiii) 2913.21 (misuse of credit cards);
- (xiv) 2913.31 (forgery, forging identification cards);
- (xv) 2913.32 (criminal simulation);
- (xvi) 2913.41 (defrauding a rental agency or hostelry);
- (xvii) 2913.42 (tampering with records);
- (xviii) 2913.43 (securing writings by deception);
- (xix) 2913.44 (personating an officer);

- (xx) 2913.441 (unlawful display of law enforcement emblem);
- (xxi) 2913.45 (defrauding creditors);
- (xxii) 2913.51 (receiving stolen property);
- (xxiii) 2919.12 (unlawful abortion);
- (xxiv) 2919.121 (unlawful abortion upon minor);
- (xxv) 2919.123 (unlawful distribution of an abortion-inducing drug);
- (xxvi) 2919.23 (interference with custody);
- (xxvii) 2919.24 (contributing to the unruliness or delinquency of a child);
- (xxviii) 2921.12 (tampering with evidence);
- (xxix) 2921.21 (compounding a crime);
- (xxx) 2921.24 (disclosure of confidential information);
- (xxxi) 2921.32 (obstructing justice);
- (xxxii) 2921.321 (assaulting or harassing a police dog, horse, or service animal);
- (xxxiii) 2921.51 (impersonation of peace officer);
- (xxxiv) 2925.09 (illegal administration, dispensing, distribution, manufacture, possession, selling, or using of any dangerous veterinary drug);
- (xxxv) 2925.11 (drug possession), unless a minor drug possession offense;
- (xxxvi) 2925.13 (permitting drug abuse);

- (xxxvii) 2925.22 (deception to obtain a dangerous drug);
 - (xxxviii) 2925.23 (illegal processing of drug documents);
 - (xxxix) 2925.36 (illegal dispensing of drug samples);
 - (xl) 2925.55 (unlawful purchase of a pseudoephedrine product, underage purchase of a pseudoephedrine product, using false information to purchase a pseudoephedrine product, improper purchase of a pseudoephedrine product);
 - (xli) 2925.56 (unlawfully selling a pseudoephedrine product; unlawfully selling a pseudoephedrine product to a minor; improper sale of a pseudoephedrine product); or,
 - (xlii) If related to another offense under paragraph (A)(4)(a) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or,
 - (xliii) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described under paragraph (A)(4)(a)(i) to (A)(4)(a)(xli) of this rule.
- (b) An applicant, or employee is subject to a seven-year exclusionary period if the applicant or employee was convicted of multiple disqualifying offenses listed in paragraph (A)(4)(a) of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act.
- (5) Tier V: no exclusionary period: A responsible party may hire an applicant or retain an employee if the applicant or employee was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code:
- (a) 2925.11 (drug possession), but only if a minor drug possession offense;
 - (b) 2925.14 (illegal use, possession, dealing, selling, or advertising of drug paraphernalia);

173-9-07

11

- (c) 2925.141 (illegal use or possession of marihuana drug paraphernalia); or,
 - (d) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described under paragraph (A)(5) of this rule.
- (B) Limited grandfathering: A responsible party may have chosen to retain an employee if the employee would otherwise have been excluded from a ~~paid-ombudsman position~~ or paid direct-care position because the employee was convicted of, or pleaded guilty to, an offense(s) listed under paragraph (A)(4) of this rule, but only if:
- (1) The responsible party hired the employee before January 1, 2013;
 - (2) The employee's conviction or guilty plea occurred before January 1, 2013; and,
 - (3) The responsible party considered the nature and seriousness of the offense(s), and attested in writing before April 1, 2013, to the character and fitness of the employee based upon the employee's demonstrated work performance.
- (C) Certificates: A responsible party may hire an applicant or retain an employee with a disqualifying offense that is not one of the offenses listed under paragraph (A)(1) of this rule if the applicant or employee was issued either a:
- (1) Certificate of qualification for employment issued by a court of common pleas with competent jurisdiction pursuant to section 2953.25 of the Revised Code (A person may petition for a certificate of qualification for employment on "The Ohio Certificate of Qualification for Employment Online Petition Website" or <https://www.drccqe.com/>); or,
 - (2) Certificate of achievement and employability in a home and community-based service-related field, issued by the department of rehabilitation and corrections pursuant to section 2961.22 of the Revised Code.
- (D) Pardons: A responsible party may hire an applicant or retain an employee if the applicant or employee has a conviction or a plea of guilty to an offense listed or described in rule 173-9-06 of the Administrative Code under any of the following circumstances:
- (1) The applicant or employee was granted an unconditional pardon for the offense

pursuant to Chapter 2967. of the Revised Code;

- (2) The applicant or employee was 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 conviction or guilty plea was set aside pursuant to law; or,
- (4) The applicant or employee was granted a conditional pardon for the offense pursuant to Chapter 2967. of the Revised Code, and the conditions under which the pardon was granted have been satisfied.

173-9-07.1

Background checks: Certifying or entering into a provider agreement with a self-employed provider who has a disqualifying offense on his or her criminal record.

A responsible party shall not reject a self-employed provider's application for ODA certification, revoke a self-employed provider's certification, reject a bid from a self-employed provider for a provider agreement, or terminate a self-employed provider's provider agreement solely because the self-employed provider has a disqualifying offense on his or her criminal record if no exclusionary period under paragraph (A) of this rule prohibits certification or a provider agreement, the limited grandfathering under paragraph (B) of this rule applies, the self-employed provider attained a certificate under paragraph (C) of this rule, or the self-employed provider attained a pardon under paragraph (D) of this rule.

(A) Disqualifying offense exclusionary periods: ~~Except as set forth in paragraphs (B), (C) and (D) of this rule, a~~ A responsible party shall not reject a self-employed provider's application for ODA certification, revoke a self-employed provider's certification, reject a bid from a self-employed provider for a provider agreement, or terminate a self-employed provider's provider agreement solely because the self-employed provider has a disqualifying offense on his or her criminal record, unless an exclusionary period in paragraph (A)(1), (A)(2), (A)(3), or (A)(4) of this rule prohibits ODA certification or a provider agreement.

(1) Tier I: permanent exclusion: A responsible party shall reject a self-employed provider's application for ODA certification, revoke a self-employed provider's certification, reject a bid from a self-employed provider for a provider agreement, or terminate a self-employed provider's provider agreement if the self-employed provider was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code:

- (a) 2903.01 (aggravated murder);
- (b) 2903.02 (murder);
- (c) 2903.03 (voluntary manslaughter);
- (d) 2903.11 (felonious assault);
- (e) 2903.15 (permitting child abuse);
- (f) 2903.16 (failing to provide for a functionally-impaired person);
- (g) 2903.34 (patient abuse or neglect);

173-9-07.1

2

- (h) 2903.341 (patient endangerment);
- (i) 2905.01 (kidnapping);
- (j) 2905.02 (abduction);
- (k) 2905.32 (human trafficking);
- (l) 2905.33 (unlawful conduct with respect to documents);
- (m) 2907.02 (rape);
- (n) 2907.03 (sexual battery);
- (o) 2907.04 (unlawful sexual conduct with a minor, formerly corruption of a minor);
- (p) 2907.05 (gross sexual imposition);
- (q) 2907.06 (sexual imposition);
- (r) 2907.07 (importuning);
- (s) 2907.08 (voyeurism);
- (t) 2907.12 (felonious sexual penetration);
- (u) 2907.31 (disseminating matter harmful to juveniles);
- (v) 2907.32 (pandering obscenity);
- (w) 2907.321 (pandering obscenity involving a minor);
- (x) 2907.322 (pandering sexually-oriented matter involving a minor);
- (y) 2907.323 (illegal use of a minor in nudity-oriented material or performance);

- (z) 2909.22 (soliciting or providing support for an act of terrorism);
 - (aa) 2909.23 (making terroristic threats);
 - (bb) 2909.24 (terrorism);
 - (cc) 2913.40 (medicaid fraud);
 - (dd) If related to another offense under paragraph (A)(1) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity);
 - (ee) A conviction related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct involving a federal or state-funded program, excluding the disqualifying offenses set forth in section 2913.46 (illegal use of SNAP or WIC program benefits) and paragraph (A)(2)(a)(xiii) of this rule; or,
 - (ff) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described in paragraphs (A)(1)(a) to (A)(1)(ee) of this rule.
- (2) Tier II: ten-year exclusionary period:
- (a) For ten years after the date that the self-employed provider was fully discharged from all imprisonment, probation, or parole, the responsible party shall reject a self-employed provider's application for ODA certification, revoke a self-employed provider's certification, reject a bid from a self-employed provider for a provider agreement, or terminate a self-employed provider's provider agreement if self-employed provider was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code:
 - (i) 2903.04 (involuntary manslaughter);
 - (ii) 2903.041 (reckless homicide);
 - (iii) 2905.04 (child stealing, as it existed before July 1, 1996);
 - (iv) 2905.05 (child enticement);

- (v) 2905.11 (extortion);
- (vi) 2907.21 (compelling prostitution);
- (vii) 2907.22 (promoting prostitution);
- (viii) 2907.23 (enticement or solicitation to patronize a prostitute;
procurement of a prostitute for another);
- (ix) 2909.02 (aggravated arson);
- (x) 2909.03 (arson);
- (xi) 2911.01 (aggravated robbery);
- (xii) 2911.11 (aggravated burglary);
- (xiii) 2913.46 (illegal use of SNAP or WIC program benefits);
- (xiv) 2913.48 (worker's compensation fraud);
- (xv) 2913.49 (identity fraud);
- (xvi) 2917.02 (aggravated riot);
- (xvii) 2923.12 (carrying concealed weapons);
- (xviii) 2923.122 (illegal conveyance or possession of deadly weapon or
dangerous ordnance in a school safety zone, illegal possession of
an object indistinguishable from a firearm in a school safety
zone);
- (xix) 2923.123 (illegal conveyance, possession, or control of deadly
weapon or ordnance into a courthouse);
- (xx) 2923.13 (having weapons while under disability);
- (xxi) 2923.161 (improperly discharging a firearm at or into a habitation
or school);

(xxii) 2923.162 (discharge of firearm on or near prohibited premises);

(xxiii) 2923.21 (improperly furnishing firearms to a minor);

(xxiv) 2923.32 (engaging in a pattern of corrupt activity);

(xxv) 2923.42 (participating in a criminal gang);

(xxvi) 2925.02 (corrupting another with drugs);

(xxvii) 2925.03 (trafficking in drugs);

(xxviii) 2925.04 (illegal manufacture of drugs or cultivation of marijuana);

(xxix) 2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs)

(xxx) 3716.11 (placing harmful or hazardous objects in food or confection);

(xxxi) If related to another offense under paragraph (A)(2)(a) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or,

(xxxii) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described under paragraphs (A)(2)(a)(i) to (A)(2)(a)(xxxi) of this rule.

(b) A self-employed provider is subject to a fifteen-year exclusionary period if the self-employed provider was convicted of multiple disqualifying offenses, including an offense listed in paragraph (A)(2)(a) of this rule, and another offense or offenses listed in paragraph (A)(2)(a), (A)(3)(a), or (A)(4)(a) of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act.

(3) Tier III: seven-year exclusionary period:

(a) For seven years after the date that the self-employed provider was fully discharged from all imprisonment, probation, or parole, the responsible party shall reject a self-employed provider's application for ODA certification, revoke a self-employed provider's certification, reject a bid from a self-employed provider for a provider agreement, or terminate a self-employed provider's provider agreement if the self-employed provider was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code:

(i) 959.13 (cruelty to animals);

(ii) 959.131 (prohibitions concerning companion animals);

(iii) 2903.12 (aggravated assault);

(iv) 2903.21 (aggravated menacing);

(v) 2903.211 (menacing by stalking);

(vi) 2905.12 (coercion);

(vii) 2909.04 (disrupting public services);

(viii) 2911.02 (robbery);

(ix) 2911.12 (burglary);

(x) 2913.47 (insurance fraud);

(xi) 2917.01 (inciting to violence);

(xii) 2917.03 (riot);

(xiii) 2917.31 (inducing panic);

(xiv) 2919.22 (endangering children);

(xv) 2919.25 (domestic violence);

(xvi) 2921.03 (intimidation);

(xvii) 2921.11 (perjury);

(xviii) 2921.13 (falsification, falsification in a theft offense, falsification to purchase a firearm, or falsification to obtain a concealed handgun license);

(xix) 2921.34 (escape);

(xx) 2921.35 (aiding escape or resistance to lawful authority);

(xxi) 2921.36 (illegal conveyance of weapons, drugs, or other prohibited items onto the grounds of a detention facility or institution);

(xxii) 2925.05 (funding drug trafficking);

(xxiii) 2925.06 (illegal administration of distribution of anabolic steroids);

(xxiv) 2925.24 (tampering with drugs);

(xxv) 2927.12 (ethnic intimidation);

(xxvi) If related to another offense under paragraph (A)(3)(a) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or,

(xxvii) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described under paragraphs (A)(3)(a)(i) to (A)(3)(a)(xxvii) of this rule.

(b) A self-employed provider is subject to a ten-year exclusionary period if he or she was convicted of multiple disqualifying offenses, including an offense listed in paragraph (A)(3)(a) of this rule, and another offense or offenses listed in paragraph (A)(3)(a) or (A)(4)(a) of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the

same act.

(4) Tier IV: five-year exclusionary period:

(a) For five years after the date that the self-employed provider was fully discharged from all imprisonment, probation, or parole, the responsible party shall reject a self-employed provider's application for ODA certification, revoke a self-employed provider's certification, reject a bid from a self-employed provider for a provider agreement, or terminate a self-employed provider's provider agreement if the self-employed provider was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code:

(i) 2903.13 (assault);

(ii) 2903.22 (menacing);

(iii) 2907.09 (public indecency);

(iv) 2907.24 (soliciting, engaging in solicitation after a positive HIV test);

(v) 2907.25 (prostitution);

(vi) 2907.33 (deception to obtain matter harmful to juveniles);

(vii) 2911.13 (breaking and entering);

(viii) 2913.02 (theft);

(ix) 2913.03 (unauthorized use of a vehicle);

(x) 2913.04 (unauthorized use of computer, cable, or telecommunication property);

(xi) 2913.05 (telecommunications fraud);

(xii) 2913.11 (passing bad checks);

- (xiii) 2913.21 (misuse of credit cards);
- (xiv) 2913.31 (forgery, forging identification cards);
- (xv) 2913.32 (criminal simulation);
- (xvi) 2913.41 (defrauding a rental agency or hostelry);
- (xvii) 2913.42 (tampering with records);
- (xviii) 2913.43 (securing writings by deception);
- (xix) 2913.44 (personating an officer);
- (xx) 2913.441 (unlawful display of law enforcement emblem);
- (xxi) 2913.45 (defrauding creditors);
- (xxii) 2913.51 (receiving stolen property);
- (xxiii) 2919.12 (unlawful abortion);
- (xxiv) 2919.121 (unlawful abortion upon minor);
- (xxv) 2919.123 (unlawful distribution of an abortion-inducing drug);
- (xxvi) 2919.23 (interference with custody);
- (xxvii) 2919.24 (contributing to the unruliness or delinquency of a child);
- (xxviii) 2921.12 (tampering with evidence);
- (xxix) 2921.21 (compounding a crime);
- (xxx) 2921.24 (disclosure of confidential information);
- (xxxi) 2921.32 (obstructing justice);

(xxxii) 2921.321 (assaulting or harassing a police dog, horse, or service animal);

(xxxiii) 2921.51 (impersonation of peace officer);

(xxxiv) 2925.09 (illegal administration, dispensing, distribution, manufacture, possession, selling, or using of any dangerous veterinary drug);

(xxxv) 2925.11 (drug possession), unless a minor drug possession offense;

(xxxvi) 2925.13 (permitting drug abuse);

(xxxvii) 2925.22 (deception to obtain a dangerous drug);

(xxxviii) 2925.23 (illegal processing of drug documents);

(xxxix) 2925.36 (illegal dispensing of drug samples);

(xl) 2925.55 (unlawful purchase of a pseudoephedrine product, underage purchase of a pseudoephedrine product, using false information to purchase a pseudoephedrine product, improper purchase of a pseudoephedrine product);

(xli) 2925.56 (unlawfully selling a pseudoephedrine product; unlawfully selling a pseudoephedrine product to a minor; improper sale of a pseudoephedrine product); or,

(xlii) If related to another offense under paragraph (A)(4)(a) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or,

(xliii) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described under paragraph (A)(4)(a)(i) to (A)(4)(a)(xli) of this rule.

(b) A self-employed provider is subject to a seven-year exclusionary period if

he or she was convicted of multiple disqualifying offenses listed in paragraph (A)(4)(a) of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act.

(5) Tier V: no exclusionary period: The responsible party shall not reject a self-employed provider's application for ODA certification, revoke a self-employed provider's certification, reject a bid from a self-employed provider for a provider agreement, or terminate a self-employed provider's provider agreement solely because the self-employed provider was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code:

(a) 2925.11 (drug possession), but only if a minor drug possession offense;

(b) 2925.14 (illegal use, possession, dealing, selling, or advertising of drug paraphernalia);

(c) 2925.141 (illegal use or possession of marihuana drug paraphernalia); or,

(d) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described under paragraph (A)(5) of this rule.

(B) Limited grandfathering: The responsible party shall not reject a self-employed provider's application for ODA certification, revoke a self-employed provider's certification, reject a bid from a self-employed provider for a provider agreement, or terminate a self-employed provider's provider agreement solely because the self-employed provider was convicted of, or pleaded guilty to, an offense listed under paragraph (A)(4) of this rule, but only if:

(1) The self-employed provider was certified or entered into a provider agreement before January 1, 2013;

(2) The self-employed provider's conviction or guilty plea occurred before January 1, 2013; and,

(3) The self-employed provider considered the nature and seriousness of his or her offense(s), and self-attested in writing before April 1, 2013, to his or her character and fitness based upon his or her demonstrated work performance.

(C) Certificates: The responsible party shall not reject a self-employed provider's application for ODA certification, revoke a self-employed provider's certification, reject a bid from a self-employed provider for a provider agreement, or terminate a self-employed provider's provider agreement solely because the self-employed provider was convicted of, or pleaded guilty to, an offense listed in paragraph (A)(2), (A)(3), or (A)(4) of this rule if the self-employed provider was issued either a:

- (1) Certificate of qualification for employment issued by a court of common pleas with competent jurisdiction pursuant to section 2953.25 of the Revised Code (A person may petition for a certificate of qualification for employment on "The Ohio Certificate of Qualification for Employment Online Petition Website" or <https://www.drccqe.com/>); or,
- (2) Certificate of achievement and employability in a home and community-based service-related field, issued by the department of rehabilitation and corrections pursuant to section 2961.22 of the Revised Code.

(D) Pardons: The responsible party shall not reject a self-employed provider's application for ODA certification, revoke a self-employed provider's certification, reject a bid from a self-employed provider for a provider agreement, or terminate a self-employed provider's provider agreement solely because the self-employed provider was convicted of, or pleaded guilty to, any offense listed or described in rule 173-9-06 of the Administrative Code under any of the following circumstances:

- (1) The self-employed provider was granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code;
- (2) The self-employed provider was 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 conviction or guilty plea was set aside pursuant to law; or,
- (4) The self-employed provider was granted a conditional pardon for the offense pursuant to Chapter 2967. of the Revised Code, and the conditions under which the pardon was granted have been satisfied.

173-9-08

Background checks: paid direct-care position: Records: records: confidentiality and retention.

~~(A) Confidentiality: Criminal records are not public records. The responsible party shall only make criminal records available to the following people:~~

~~(1) For ombudsman positions:~~

- ~~(a) The applicant or employee who is the subject of the criminal records check or the applicant's or employee's representative.~~
- ~~(b) The responsible party or the responsible party's designee.~~
- ~~(c) The state long-term care ombudsman or a representative of the office of the state long-term care ombudsman program who is responsible for monitoring the regional program's compliance.~~
- ~~(d) A court, hearing officer, or other necessary individual involved in a case dealing with any of the following:~~
 - ~~(i) A denial of employment of the applicant or employee.~~
 - ~~(ii) Employment or unemployment benefits of the applicant or employee.~~
 - ~~(iii) A civil or criminal action regarding the medicaid program or an ODA-administered program.~~

~~(2)~~(A) For direct-care positions: Confidentiality: Criminal records are not public records. The responsible party shall only make criminal records available to the following people:

- ~~(a)~~(1) The applicant, employee, or self-employed provider who is the subject of the criminal records check or the applicant's, employee's, or self-employed provider's representative.
- ~~(b)~~(2) The responsible party that conducted the criminal records check or the responsible party's representative.
- ~~(c)~~(3) The administrator of any other facility, agency, or program that employs direct-care positions that is owned or operated by the same party that owns or operates the responsible party that conducted the criminal records check.
- ~~(d)~~(4) The employment service that conducted the criminal records check, if an employment service conducted the criminal records check.

173-9-08

2

~~(e)~~(5) ODA's director and any person that the director authorizes to monitor responsible parties' compliance with Chapter 173-9 of the Administrative Code.

~~(f)~~(6) The director of the Ohio department of medicaid and staff of the department of medicaid who are involved in the administration of the medicaid program in any of the following three situations:

~~(i)~~(a) A responsible party that is also a waiver agency conducted a criminal records check on an applicant or employee.

~~(ii)~~(b) An employment service conducted a criminal records check on an applicant or employee that it referred to a responsible party that is also a waiver agency.

~~(iii)~~(c) A consumer, acting as the responsible party, conducted a criminal records check on an applicant or employee for a consumer-directed or self-directed arrangement.

~~(g)~~(7) A court, hearing officer, or other necessary individual involved in a case dealing with any of the following three situations:

~~(i)~~(a) A denial of employment of the applicant or employee.

~~(ii)~~(b) Employment or unemployment benefits of the applicant or employee.

~~(iii)~~(c) A civil or criminal action regarding the medicaid program or an ODA-administered program.

(B) Records retention:

(1) Personnel files:

(a) What to retain: To verify compliance with Chapter 173-9 of the Administrative Code, for each applicant the responsible party hired, each employee the responsible party retained, each self-employed applicant the responsible party certified, each self-employed person that retained certification, each self-employed bidder for a provider agreement, or each self-employed person presently under a provider agreement, the responsible party shall retain electronic or paper copies

of the following records:

- (i) The result of each of the database reviews.
 - (ii) Any criminal records including reverified records.
 - (iii) 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 (B)(3) of rule 173-9-07 of the Administrative Code, or the written attestation to the character and fitness of the self-employed provider, if the self-employed provider completed a written attestation before April 1, 2013 to comply with paragraph (B)(3) of rule 173-9-07.1 of the Administrative Code.
 - (iv) A certificate of qualification for employment, if a court issued a certificate of qualification for employment to the employee.
 - (v) A certificate of achievement and employability, if the department of rehabilitation and corrections issued a certificate of achievement and employability to the employee.
 - (vi) A pardon, if a governor pardoned the employee.
 - (vii) The date the responsible party hired the employee. Regarding a self-employed person, the responsible party shall retain the date that it certified the self-employed person or entered into a provider agreement with the self-employed person.
- (b) Sealed files: To comply with paragraph (A) of this rule, the responsible party shall retain the records that paragraph (B)(1) of this rule requires the responsible party to retain by sealing the records within the each applicant's or each employee's personnel files or by retaining the records in separate files from the personnel files. Regarding a self-employed person, the responsible party shall simply retain the records.
- (c) Retention period:
- (i) The responsible party that is an ODA-certified provider shall retain records and make them available for monitoring purposes

173-9-08

4

according to the timelines and other terms that rule 173-39-02 of the Administrative Code established.

- (ii) The responsible party that is a non-certified provider shall retain records and make them available for monitoring purposes according to the timelines and other terms that rule 173-3-06 of the Administrative Code established.

(2) Roster:

- (a) A responsible party shall maintain a roster of applicants and employees, accessible by ODA's director (or the director's designees), that includes, but is not limited to:

- (i) The name of each applicant and employee.

- (ii) The date ~~the applicant or employee started to work for the~~ responsible party hired the employee.

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

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

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

- (b) Regarding the self-employed, the responsible party shall retain the following information, accessible by ODA's director (or the director's designees), that includes, but is not limited to:

- (i) The date that ODA certified the self-employed provider.

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

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

- (iv) A determination of whether the criminal records revealed that the self-employed provider committed a disqualifying offense(s).

173-9-09

Background checks: direct-care positions: Immunity from negligent hiring, certification, or provider agreements.

(A) In a tort or other civil action for damages that is brought as the result of an injury, death, or loss to person or property caused by an applicant or employee, all of the following apply:

- (1) If the responsible party hired the applicant or retained the employee in good faith and reasonable reliance upon the applicant's or employee's criminal record, the responsible party shall not be found negligent solely because of its reliance on the criminal record, even if the criminal record is later determined to have been incomplete or inaccurate.
- (2) If the responsible party conditionally hired the applicant in good faith and in ~~a manner that complied~~ compliance with rule 173-9-05 of the Administrative Code, the responsible party shall not be found negligent solely because it hired the applicant before receiving the applicant's criminal record.
- (3) If the responsible party in good faith hired the applicant or retained the employee because ~~the applicant or employee met the standards in~~ rule 173-9-07 of the Administrative Code ~~that allow a~~ allowed the responsible party to hire an applicant or retain an employee with a disqualifying offense on his or her criminal record, the responsible party shall not be negligent solely because the applicant or employee has been convicted of, or pleaded guilty to, a disqualifying offense.

(B) In a tort or other civil action for damages that is brought as the result of an injury, death, or loss to person or property caused by a self-employed provider, both of the following apply:

- (1) If the responsible party certified or entered into a provider agreement with the self-employed provider, or did not revoke or terminate the person's certification or provider agreement, in good faith and reasonable reliance upon the person's criminal record, the responsible party shall not be found negligent solely because of its reliance on the criminal record, even if the criminal record is later determined to have been incomplete or inaccurate.
- (2) If the responsible party in good faith certified or entered into a provider agreement with the self-employed provider, or did not revoke or terminate the self-employed provider's certification or provider agreement, because the person met the standards in rule 173-9-07.1 of the Administrative Code that allow a responsible party to certify or enter into a provider agreement with a self-employed provider who has a disqualifying offense on his or her criminal record, the responsible party shall not be negligent solely because the

173-9-09

2

self-employed provider has been convicted of, or pleaded guilty to, a disqualifying offense.

173-14-14

Staffing requirements, ~~and~~ staff qualifications, and background checks.

~~(A) Staffing requirements:~~

~~(+)~~(A) Staffing requirements: Each regional program shall employ one paid, full-time employee to serve as the program's ombudsman program director. If a ~~program director sponsoring agency is responsible for~~ administers 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 ~~qualification~~ 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~~ hire or accept a person ~~as a staff member if the person~~ who:

(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~~ an 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 with the approval of the SLTCO.

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

(a) ~~Is~~ 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 representative who does not meet this

requirement may substitute commensurate experience or education to meet the education qualification.

- (b) ~~Has~~ 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) ~~Free database reviews and criminal records checks~~ Background checks: The SLTCO (or the SLTCO's designee) shall conduct the free database reviews and criminal records checks required under section Section 173.27 of the Revised Code and ~~Chapter 173-9 of the Administrative Code~~ paragraph (C) of this rule require meeting background-check requirements when 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:

"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.

"ODA" means "the Ohio department of aging."

"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 ODA'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 following six databases:

DATABASES TO REVIEW

<u>SAM</u>	https://www.sam.gov/
<u>OIG</u>	http://exclusions.oig.hhs.gov/
<u>Abuser Registry</u>	https://its.prodapps.dodd.ohio.gov/ABR_Default.aspx
<u>Sex-Offender Search</u>	http://www.drc.ohio.gov/OffenderSearch/Search.aspx
<u>Offender Search</u>	http://www.drc.ohio.gov/OffenderSearch/Search.aspx
<u>Nurse-Aide Registry</u>	https://odhgateway.odh.ohio.gov/nar/nar_registry_search.aspx

(i) The United States general services administration's system for award management.

(ii) The office of inspector general of the United States department of health and human services' list of excluded individuals.

(iii) The department of developmental disabilities' online abuser registry that lists people cited for abuse, neglect, or misappropriation.

(iv) The Ohio attorney general's sex offender and child-victim offender database.

(v) The department of rehabilitation and correction's database of inmates.

(vi) The department of health's state nurse aide registry. 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 that paragraph (C)(3) of this rule requires for applicants.

(ii) Employees (post-hire): The responsible party shall review each employee's (post-hire) status in the databases before conducting the criminal records check that paragraph (C)(3) of this rule requires for employees.

(c) Disqualifying status:

(i) No responsible party shall 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)(v) of this rule lists the applicant or employee or the database in paragraph (C)(2)(a)(vi) 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) 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 for pre-2008 hire dates: If the responsible party hired the employee before January 1, 2008, the responsible party shall conduct a criminal records check on the employee no later than thirty days after the 2013 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 anniversary to conduct a criminal records check. The responsible party has five years, plus thirty days, to conduct the next check.

(b) Five-year schedule for 2008-present hire dates: If the responsible party hired the employee on or after January 1, 2008, 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.

(c) 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.

(iii) Reverification: If any person has requested a criminal records check on an applicant or employee in the past year that, according to division (B)(1) of section 109.572 of the Revised Code, requires BCII to include sealed criminal records in the criminal records that it returns to the person, the responsible party may request a reverification of that criminal record from BCII to determine if an applicant's or employee's criminal records disqualifies him or her from being hired into, or retaining, a paid ombudsman position. The reverification of the criminal record has the same validity as the criminal records received during the past year.

(c) Sealed records: Division (B)(1) of section 109.572 of the Revised Code requires BCII to include sealed criminal records in its criminal records reports for criminal records checks conducted under section 173.27 of the Revised Code.

(d) When to check FBI's criminal records:

(i) Residency: If an applicant or employee does not provide the

responsible party with evidence that he or she has been a resident of Ohio for the five-year period immediately preceding the date the responsible party must request a criminal records check, or if the applicant or employee does not provide the responsible party with evidence that BCII has requested his or her criminal records from the FBI within the five-year period immediately preceding the date the responsible party requests the criminal records check, the responsible party shall request that BCII obtain criminal records from the FBI as part of the criminal records check.

(ii) Will of the responsible party: If an applicant or employee provides the responsible party with evidence that he or she has been a resident of Ohio for the five-year period immediately preceding the date the responsible party requests the criminal records check, the responsible party may request that BCII obtain criminal records from the FBI as part of the criminal records check.

(e) Inform applicant: When an applicant initially applies for a paid ombudsman position, the responsible party shall inform the applicant of the following:

(i) If the responsible party gives the applicant final consideration for hiring into the position, the following shall happen:

(a) The responsible party shall review the applicant's status in the databases listed in paragraph (C)(2)(a) of this rule.

(b) Unless the database reviews reveal that the responsible party shall not hire the applicant, the responsible party shall conduct a criminal records check and the applicant shall provide a set of his or her fingerprints as part of the criminal records check.

(ii) If the responsible party hires the applicant, as a condition to retain the position, the responsible party shall conduct post-hire database reviews and criminal records checks according to one of the three schedules listed under paragraph (C)(3)(b)(ii) of this rule.

(iii) If the responsible party intends to charge the applicant the fees divisions (C)(2) and (C)(3) of section 109.572 of the Revised Code authorize the responsible party to charge, the responsible party shall inform the applicant of the fees at the time of application.

(f) Investigation fees:

- (i) The responsible party shall pay BCII the fees that divisions (C)(2) and (C)(3) of section 109.572 of the Revised Code authorize for each criminal records check.
 - (ii) The responsible party may charge the applicant a fee for checking criminal records so long as the fee does not exceed the amount the responsible party pays to BCII; and, if at the time of initial application, the responsible party informed the applicant of the fee's amount and that the responsible party would not hire the applicant if the applicant did not pay the fee.
 - (g) Forms: Unless the applicant or employee follows the procedures that BCII established in rule 109:5-1-01 of the Administrative Code for providing fingerprints electronically and requesting criminal records electronically, the responsible party shall complete the following two tasks:
 - (i) The responsible party shall provide each applicant or employee with the form(s) that BCII requires in division (C)(1) of section 109.572 of the Revised Code.
 - (ii) The responsible party shall forward the completed fingerprints and forms to BCII for processing.
- (4) Conditional hiring: This paragraph addresses the conditional hiring of applicants for paid ombudsman positions. This paragraph does not require employees who hold paid ombudsman positions to enter a conditional status when they undergo post-hire criminal records checks
 - (a) Sixty-day period: A responsible party may conditionally hire an applicant for up to sixty days while it waits for the applicant's criminal records, but only if the responsible party complies with the following requirements:
 - (i) Database reviews: The responsible party shall not conditionally hire an applicant unless the responsible party conducted database reviews and the applicant's status in the databases was not disqualifying.
 - (ii) Criminal records check: The responsible party shall not conditionally hire an applicant unless the responsible party requests a criminal records check before the following deadlines:
 - (a) "WebCheck": If the responsible party requires the applicant to provide his or her fingerprints directly to BCII by using "WebCheck," the responsible party shall not conditionally

hire the applicant until the applicant provides his or her fingerprints to a "WebCheck" vendor.

(b) Fingerprint impression sheet: If the responsible party does not require the applicant to provide his or her fingerprints directly to BCII by using "WebCheck," the responsible party shall not conditionally hire the applicant until the responsible party receives the applicant's fingerprints on a completed fingerprint impression sheet. If the responsible party conditionally hires the applicant after receiving the fingerprint impression sheet, the responsible party shall provide the sheet to BCII no later than five business days after the responsible party conditionally hires the applicant.

(b) Three reasons to release an applicant:

(i) Sixty-day period ends:

(a) Only BCII check required: The responsible party shall release the conditionally-hired applicant from a paid ombudsman position if more than sixty days passed since the day the responsible party requested a criminal records and the responsible party has not yet received the criminal records.

(b) BCII and FBI checks required: The responsible party is not required to release the conditionally-hired applicant if more than sixty days passed since the responsible party requested criminal records from the FBI and the responsible party has not yet received the FBI's criminal records, but only if section 173.27 of the Revised Code required the responsible party to request criminal records from the FBI, and one of the following two conditions exist:

(i) The responsible party received criminal records from BCII before the sixty-day period ended and the criminal records from BCII did not list a disqualifying offense.

(ii) The responsible party received criminal records from BCII before the sixty-day period ended and the criminal records from BCII listed a disqualifying offense, but the terms of paragraph (C)(6) of this rule would allow the responsible party to hire the applicant, and the responsible party would be willing to hire the applicant under the terms of paragraph (C)(6) of this rule if the forthcoming criminal records

from the FBI would not prohibit the responsible party from doing so.

(ii) Disqualifying offense on record: The responsible party shall release the conditionally-hired applicant if the applicant's criminal record lists a disqualifying offense, unless the responsible party is able and willing to hire the applicant under the terms of paragraph (C)(6) of this rule. If the responsible party is unable or unwilling to hire an applicant with a disqualifying offense on his or her criminal record, the responsible party shall release the conditionally-hired applicant regardless of the day during the sixty-day period that the responsible party received the criminal records.

(iii) Deception: If a conditionally-hired applicant made any attempt to deceive the responsible party about his or her criminal record, the attempt is just cause for the responsible party to release the conditionally-hired applicant.

(c) Hiring released applicants: If a responsible party released a conditionally-hired applicant to comply with the sixty-day limit in paragraph (C)(4)(a) of this rule, the responsible party may resume hiring the released applicant after the responsible party receives the criminal records if either one of the following two conditions exist:

(i) The applicant's criminal record does not list a disqualifying offense.

(ii) The applicant's criminal record lists a disqualifying offense, but the responsible party is able and willing to hire the applicant under the terms of paragraph (C)(6) of this rule.

(5) Disqualifying offenses:

(a) Except as set forth in paragraph (C)(6) of this rule, no responsible party shall hire an applicant or retain an employee if the applicant or employee was convicted of, or pleaded guilty to, a violation of any of the following sections of the Revised Code: 959.13 (cruelty to animals); 959.131 (prohibitions concerning companion animals); 2903.01 (aggravated murder); 2903.02 (murder); 2903.03 (voluntary manslaughter); 2903.04 (involuntary manslaughter); 2903.041 (reckless homicide); 2903.11 (felonious assault); 2903.12 (aggravated assault); 2903.13 (assault); 2903.15 (permitting child abuse); 2903.16 (failing to provide for a functionally-impaired person); 2903.21 (aggravated menacing); 2903.211 (menacing by stalking); 2903.22 (menacing); 2903.34 (patient abuse and neglect); 2903.341 (patient endangerment); 2905.01 (kidnapping); 2905.02 (abduction); 2905.04 (child stealing, as

it existed before July 1, 1996); 2905.05 (criminal child enticement); 2905.11 (extortion); 2905.12 (coercion); 2905.32 (trafficking in persons); 2905.33 (unlawful conduct with respect to documents); 2907.02 (rape); 2907.03 (sexually battery); 2907.04 (unlawful sexual conduct with a minor, formerly corruption of a minor); 2907.05 (gross sexual imposition); 2907.06 (sexual imposition); 2907.07 (importuning); 2907.08 (voyeurism); 2907.09 (public indecency); 2907.12 (felonious sexual penetration, as it existed before July 1, 1996); 2907.21 (compelling prostitution); 2907.22 (promoting prostitution); 2907.23 (enticement or solicitation to patronize a prostitute; procurement of a prostitute for another); 2907.24 (soliciting, engaging in solicitation after a positive HIV test); 2907.25 (prostitution); 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 a minor in nudity-oriented material or performance); 2907.33 (deception to obtain matter harmless to juveniles); 2909.02 (aggravated arson); 2909.03 (arson); 2909.04 (disrupting public services); 2909.22 (soliciting or providing support for act of terrorism); 2909.23 (making terroristic threat); 2909.24 (terrorism); 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 computer, cable, or telecommunication property); 2913.05 (telecommunications fraud); 2913.11 (passing bad checks); 2913.21 (misuse of credit cards); 2913.31 (forgery, forging identification cards); 2913.32 (criminal simulation); 2913.40 (medicaid fraud); 2913.41 (defrauding a rental agency or hostelry); 2913.42 (tampering with records); 2913.43 (securing writings by deception); 2913.44 (personating an officer); 2913.441 (unlawful display of law enforcement emblem); 2913.45 (defrauding creditors); 2913.46 (illegal use of SNAP or WIC program benefits); 2913.47 (insurance fraud); 2913.48 (workers' compensation fraud); 2913.49 (identify fraud); 2913.51 (receiving stolen property); 2917.01 (inciting to violence); 2917.02 (aggravated riot); 2917.03 (riot); 2917.31 (inducing panic); 2919.12 (unlawful abortion); 2919.121 (unlawful abortion upon minor); 2919.123 (unlawful distribution of an abortion-inducing drug); 2919.22 (endangering children); 2919.23 (interference with custody); 2919.24 (contributing to unruliness or delinquency of child); 2919.25 (domestic violence); 2921.03 (intimidation); 2921.11 (perjury); 2921.12 (tampering with evidence); 2921.13 (falsification, falsification in a theft offense, falsification to purchase a firearm, or falsification to obtain a concealed handgun license); 2921.21 (compounding a crime); 2921.24 (disclosure of confidential information); 2921.32 (obstructing justice); 2921.321 (assaulting or harassing a police dog, horse, or service animal); 2921.34 (escape); 2921.35 (aiding escape or resistance to

lawful authority); 2921.36 (illegal conveyance of weapons, drugs or other prohibited items onto grounds of detention facility or institution); 2921.51 (impersonation of peace officer); 2923.01 (conspiracy, related to another disqualifying offense); 2923.02 (attempt to commit an offense, related to another disqualifying offense); 2923.03 (complicity, related to another disqualifying offense); 2923.12 (carrying concealed weapons); 2923.122 (illegal conveyance or possession of deadly weapon or dangerous ordnance in a school safety zone, illegal possession of an object indistinguishable from a firearm in a school safety zone); 2923.123 (illegal conveyance, possession, or control of deadly weapon or ordnance into a courthouse); 2923.13 (having weapons while under disability); 2923.161 (improperly discharging a firearm at or into a habitation or school); 2923.162 (discharge of firearm on or near prohibited premises); 2923.21 (improperly furnishing firearms to minor); 2923.32 (engaging in a pattern of corrupt activity); 2923.42 (participating in criminal gang); 2925.02 (corrupting another with drugs); 2925.03 (trafficking in drugs); 2925.04 (illegal manufacture of drugs or cultivation of marijuana); 2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs); 2925.05 (funding of drug or marijuana trafficking); 2925.06 (illegal administration or distribution of anabolic steroids); 2925.09 (illegal administration, dispensing, distribution, manufacture, possession, selling, or using of any dangerous veterinary drug); 2925.11 (possession of drugs); 2925.13 (permitting drug abuse); 2925.14 (illegal use, possession, dealing, selling, or advertising of drug paraphernalia); 2925.141 (illegal use or possession of marijuana drug paraphernalia); 2925.22 (deception to obtain dangerous drugs); 2925.23 (illegal processing of drug documents); 2925.24 (tampering with drugs); 2925.36 (dispensing drug samples); 2925.55 (unlawful purchase of a pseudoephedrine product, underage purchase of a pseudoephedrine product, using false information to purchase a pseudoephedrine product, improper purchase of a pseudoephedrine product); 2925.56 (unlawfully selling a pseudoephedrine product; unlawfully selling a pseudoephedrine product to a minor; improper sale of a pseudoephedrine product); 2927.12 (ethnic intimidation); or, 3716.11 (placing harmful objects in food or confection).

(b) Except as set forth in paragraph (C)(6) of this rule, no responsible party shall hire an applicant or retain an employee if the applicant or employee was convicted of a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described in paragraph (C)(5)(a) of this rule.

(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 an exclusionary period under paragraph (C)(6)(a) of this rule, limited grandfathering under paragraph (C)(6)(b) of this rule, obtaining a certificate under paragraph (C)(6)(c) of this rule, or obtaining a pardon under paragraph (C)(6)(d) of this rule.

(a) Disqualifying offense exclusionary periods: A responsible party may hire an applicant or retain an employee who was convicted of, or pleaded guilty to, an offense listed in paragraph (C)(5) of the rule unless an exclusionary period in paragraph (C)(6)(a)(i), (C)(6)(a)(ii), (C)(6)(a)(iii), or (C)(6)(a)(iv) of this rule prohibits hiring the applicant or retaining the employee.

(i) Tier I: permanent exclusion: No responsible party shall hire an applicant or retain an employee if the applicant or employee was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code: 2903.01 (aggravated murder); 2903.02 (murder); 2903.03 (voluntary manslaughter); 2903.11 (felonious assault); 2903.15 (permitting child abuse); 2903.16 (failing to provide for a functionally-impaired person); 2903.34 (patient abuse or neglect); 2903.341 (patient endangerment); 2905.01 (kidnapping); 2905.02 (abduction); 2905.32 (human trafficking); 2905.33 (unlawful conduct with respect to documents); 2907.02 (rape); 2907.03 (sexual battery); 2907.04 (unlawful sexual conduct with a minor, formerly corruption of a minor); 2907.05 (gross sexual imposition); 2907.06 (sexual imposition); 2907.07 (importuning); 2907.08 (voyeurism); 2907.12 (felonious sexual penetration); 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 a minor in nudity-oriented material or performance); 2909.22 (soliciting or providing support for an act of terrorism); 2909.23 (making terroristic threats); 2909.24 (terrorism); 2913.40 (medicaid fraud); if related to another offense in this paragraph, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); a conviction related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct involving a federal or state-funded program, excluding the disqualifying offenses set forth in section 2913.46 (illegal use of SNAP or WIC program benefits); or, a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described in this paragraph.

(ii) Tier II: ten-year exclusionary period:

- (a) No responsible party shall hire an applicant or retain an employee for a period of ten years from the date the applicant or employee was fully discharged from all imprisonment, probation, or parole, if the applicant or employee was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code: 2903.04 (involuntary manslaughter); 2903.041 (reckless homicide); 2905.04 (child stealing, as it existed before July 1, 1996); 2905.05 (child enticement); 2905.11 (extortion); 2907.21 (compelling prostitution); 2907.22 (promoting prostitution); 2907.23 (enticement or solicitation to patronize a prostitute; procurement of a prostitute for another); 2909.02 (aggravated arson); 2909.03 (arson); 2911.01 (aggravated robbery); 2911.11 (aggravated burglary); 2913.46 (illegal use of SNAP or WIC program benefits); 2913.48 (worker's compensation fraud); 2913.49 (identity fraud); 2917.02 (aggravated riot); 2923.12 (carrying concealed weapons); 2923.122 (illegal conveyance or possession of deadly weapon or dangerous ordnance in a school safety zone, illegal possession of an object indistinguishable from a firearm in a school safety zone); 2923.123 (illegal conveyance, possession, or control of deadly weapon or ordnance into a courthouse); 2923.13 (having weapons while under disability); 2923.161 (improperly discharging a firearm at or into a habitation or school); 2923.162 (discharge of firearm on or near prohibited premises); 2923.21 (improperly furnishing firearms to a minor); 2923.32 (engaging in a pattern of corrupt activity); 2923.42 (participating in a criminal gang); 2925.02 (corrupting another with drugs); 2925.03 (trafficking in drugs); 2925.04 (illegal manufacture of drugs or cultivation of marijuana); 2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs); 3716.11 (placing harmful or hazardous objects in food or confection); if related to another offense in this paragraph, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or, a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described in this paragraph.
- (b) An applicant or employee is subject to a fifteen-year exclusionary period if the applicant, or employee was convicted of multiple disqualifying offenses, including an offense listed in paragraph (C)(6)(a)(ii)(a) of this rule, and

another offense or offenses listed in paragraph (C)(6)(a)(ii)(a), (C)(6)(a)(iii)(a) , or (C)(6)(a)(iv)(a) of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act.

(iii) Tier III: seven-year exclusionary period:

(a) No responsible party shall hire an applicant or retain an employee for a period of seven years from the date the applicant or employee was fully discharged from all imprisonment, probation, or parole, if the applicant or employee was convicted of, or pleaded guilty to, any offense in any of the following sections of the Revised Code: 959.13 (cruelty to animals); 959.131 (prohibitions concerning companion animals); 2903.12 (aggravated assault); 2903.21 (aggravated menacing); 2903.211 (menacing by stalking); 2905.12 (coercion); 2909.04 (disrupting public services); 2911.02 (robbery); 2911.12 (burglary); 2913.47 (insurance fraud); 2917.01 (inciting to violence); 2917.03 (riot); 2917.31 (inducing panic); 2919.22 (endangering children); 2919.25 (domestic violence); 2921.03 (intimidation); 2921.11 (perjury); 2921.13 (falsification, falsification in a theft offense, falsification to purchase a firearm, or falsification to obtain a concealed handgun license); 2921.34 (escape); 2921.35 (aiding escape or resistance to lawful authority); 2921.36 (illegal conveyance of weapons, drugs, or other prohibited items onto the grounds of a detention facility or institution); 2925.05 (funding drug trafficking); 2925.06 (illegal administration of distribution of anabolic steroids); 2925.24 (tampering with drugs); 2927.12 (ethnic intimidation); if related to another offense in this paragraph, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or, a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described in this paragraph.

(b) An applicant or employee is subject to a ten-year exclusionary period if the applicant or employee was convicted of multiple disqualifying offenses, including an offense listed in paragraph (C)(6)(a)(iii)(a) of this rule, and another offense or offenses listed in paragraph (C)(6)(a)(iii)(a) or (C)(6)(a)(iv)(a) of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act.

(iv) Tier IV: five-year exclusionary period:

(a) No responsible party shall hire an applicant or retain an employee for a period of five years from the date the applicant or employee was fully discharged from all imprisonment, probation, or parole, if the applicant or employee was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code: 2903.13 (assault); 2903.22 (menacing); 2907.09 (public indecency); 2907.24 (soliciting, engaging in solicitation after a positive HIV test); 2907.25 (prostitution); 2907.33 (deception to obtain matter harmful to juveniles); 2911.13 (breaking and entering); 2913.02 (theft); 2913.03 (unauthorized use of a vehicle); 2913.04 (unauthorized use of computer, cable, or telecommunication property); 2913.05 (telecommunications fraud); 2913.11 (passing bad checks); 2913.21 (misuse of credit cards); 2913.31 (forgery, forging identification cards); 2913.32 (criminal simulation); 2913.41 (defrauding a rental agency or hostelry); 2913.42 (tampering with records); 2913.43 (securing writings by deception); 2913.44 (personating an officer); 2913.441 (unlawful display of law enforcement emblem); 2913.45 (defrauding creditors); 2913.51 (receiving stolen property); 2919.12 (unlawful abortion); 2919.121 (unlawful abortion upon minor); 2919.123 (unlawful distribution of an abortion-inducing drug); 2919.23 (interference with custody); 2919.24 (contributing to the unruliness or delinquency of a child); 2921.12 (tampering with evidence); 2921.21 (compounding a crime); 2921.24 (disclosure of confidential information); 2921.32 (obstructing justice); 2921.321 (assaulting or harassing a police dog, horse, or service animal); 2921.51 (impersonation of peace officer); 2925.09 (illegal administration, dispensing, distribution, manufacture, possession, selling, or using of any dangerous veterinary drug); 2925.11 (drug possession), unless a minor drug possession offense; 2925.13 (permitting drug abuse); 2925.22 (deception to obtain a dangerous drug); 2925.23 (illegal processing of drug documents); 2925.36 (illegal dispensing of drug samples); 2925.55 (unlawful purchase of a pseudoephedrine product, underage purchase of a pseudoephedrine product, using false information to purchase a pseudoephedrine product, improper purchase of a pseudoephedrine product); 2925.56 (unlawfully selling a pseudoephedrine product; unlawfully selling a pseudoephedrine product to a minor; improper sale of a

pseudoephedrine product); if related to another offense in this paragraph, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or, a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described in this paragraph.

(b) An applicant, or employee is subject to a seven-year exclusionary period if the applicant or employee was convicted of multiple disqualifying offenses listed in paragraph (C)(6)(a)(iv)(a) of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act.

(v) Tier V: no exclusionary period: A responsible party may hire an applicant or retain an employee if the applicant or employee was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code: 2925.11 (drug possession), but only if a minor drug possession offense; 2925.14 (illegal use, possession, dealing, selling, or advertising of drug paraphernalia); 2925.141 (illegal use or possession of marihuana drug paraphernalia); or, a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violation in this paragraph.

(b) Limited grandfathering: A responsible party may have chosen to retain an employee if the employee would otherwise have been excluded from a paid ombudsman position because the employee was convicted of, or pleaded guilty to, an offense(s) listed under paragraph (C)(6)(a)(iv) of this rule, but only if all of the following three requirements were met:

(i) The responsible party hired the employee before January 1, 2013.

(ii) The employee's conviction or guilty plea occurred before January 1, 2013.

(iii) The responsible party considered the nature and seriousness of the offense(s), and attested in writing before April 1, 2013, to the character and fitness of the employee based upon the employee's demonstrated work performance.

(c) Certificates: A responsible party may hire an applicant or retain an employee with a disqualifying offense that is not one of the offenses listed under paragraph (C)(6)(a)(i) of this rule if the applicant or employee was issued either of the following:

- (i) Certificate of qualification for employment issued by a court of common pleas with competent jurisdiction pursuant to section 2953.25 of the Revised Code (A person may petition for a certificate of qualification for employment on "The Ohio Certificate of Qualification for Employment Online Petition Website" or <https://www.drccqe.com/>).
 - (ii) Certificate of achievement and employability in a home and community-based service-related field, issued by the department of rehabilitation and corrections pursuant to section 2961.22 of the Revised Code.
 - (d) Pardons: A responsible party may hire an applicant or retain an employee if the applicant or employee has a conviction or a plea of guilty to an offense listed or described in paragraph (C)(5) of this rule under any of the following circumstances:
 - (i) The applicant or employee was granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code.
 - (ii) The applicant or employee was 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.
 - (iii) The conviction or guilty plea was set aside pursuant to law.
 - (iv) The applicant or employee was granted a conditional pardon for the offense pursuant to Chapter 2967. of the Revised Code, and the conditions under which the pardon was granted have been satisfied.
- (7) Confidentiality: Criminal records are not public records. The responsible party shall only make criminal records available to the following people:
 - (a) The applicant or employee who is the subject of the criminal records check or the applicant's or employee's representative.
 - (b) The responsible party or the responsible party's designee.
 - (c) The state long-term care ombudsman or a representative of the office of the state long-term care ombudsman program who is responsible for monitoring the regional program's compliance.
 - (d) A court, hearing officer, or other necessary individual involved in a case dealing with any of the following:

- (i) A denial of employment of the applicant or employee.
- (ii) Employment or unemployment benefits of the applicant or employee.
- (iii) A civil or criminal action regarding the medicaid program or an ODA-administered program.

(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. The date the responsible party hired the employee.

- (ii) Sealed files: To comply with paragraph (C)(7) of this rule, the responsible party shall retain the records that paragraph (C)(8)(a)(i) of this rule requires the responsible party to retain 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. Regarding a self-employed person, the

responsible party shall simply retain the records.

(b) Roster: A responsible party shall maintain a roster of applicants and employees, accessible by ODA'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).

(9) Immunity from negligent hiring: In a tort or other civil action for damages that is brought as the result of an injury, death, or loss to person or property caused by an applicant or employee, all of the following apply:

(a) If the responsible party hired the applicant or retained the employee in good faith and reasonable reliance upon the applicant's or employee's criminal record, the responsible party shall not be found negligent solely because of its reliance on the criminal record, even if the criminal record is later determined to have been incomplete or inaccurate.

(b) If the responsible party conditionally hired the applicant in good faith and in compliance with paragraph (C)(4) of this rule, the responsible party shall not be found negligent solely because it hired the applicant before receiving the applicant's criminal record.

(c) If the responsible party in good faith hired an applicant or retained an employee because paragraph (C)(6) of this rule allows the responsible party to hire an applicant or retain an employee with a disqualifying offense on his or her criminal record, the responsible party shall not be negligent solely because the applicant or employee has been convicted of, or pleaded guilty to, a disqualifying offense.

(D) Background checks for volunteer ombudsman positions: Because section 173.27 of the Revised Code excludes volunteers from the definitions of "applicant" and "employee," applicants for, and employees in, volunteer ombudsman positions are not subject to the background check requirements in section 173.27 of the Revised Code or paragraph (C) of this rule. A responsible party may conduct a criminal records check on a applicant for, or an employee in, a volunteer ombudsman position 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 applicant or employee 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.