



# Common Sense Initiative

Mike DeWine, Governor  
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## Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Medicaid

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Regulation/Package Title (a general description of the rules' substantive content):

ODM Administered Waiver Service Rules

Rule Number(s): 5160-45-06, 5160-45-07, 5160-45-08, and 5160-45-09.

Rule included for informational purposes only: 5160-45-11

Date of Submission for CSI Review: 6/27/2025

Public Comment Period End Date: 7/4/2025

**Rule Type/Number of Rules:**

New/\_\_\_ rules

No Change/\_\_\_ rules (FYR? \_\_)

Amended/ 4 rules (FYR? Y)

Rescinded/\_\_\_ rules (FYR? \_\_)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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### **Reason for Submission**

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.  
☒ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- b. ☒ Requires specific expenditures or the report of information as a condition of compliance.
- c. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

### **Regulatory Intent**

2. Please briefly describe the draft regulation in plain language.

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

**Rule 5160-45-06**, entitled “Ohio department of medicaid (ODM) -administered waiver program: structural reviews of providers and investigation of provider occurrences,” sets forth the process and requirements for conducting structural reviews of ODM-administered waiver service providers to ensure providers' compliance with ODM-administered waiver requirements. The rule will be proposed for amendment as part of a five-year rule review.

The to be proposed changes are to remove restrictive language.

**Rule 5160-45-07**, entitled “ODM-administered waiver programs: criminal records checks involving agency providers,” sets forth the process and requirements for the criminal records check requirements for agency providers of the ODM-administered waiver program services. The rule will be for amendment as part of a five-year rule review.

The to be proposed changes are:

- To add subcontractors as applicable entities requiring a criminal records check.
- To remove regulatory restrictive language and superfluous language.
- To add definitions used in rule.

**Rule 5160-45-08**, entitled “ODM-administered waiver programs: criminal records checks involving independent providers,” sets forth the process and requirements for the criminal records check requirements for independent providers of the ODM-administered waiver program services. The rule will be proposed for amendment as part of a five-year rule review.

The to be proposed changes are:

- To remove restrictive language.
- To remove a definition no longer applicable.

**Rule 5160-45-09**, entitled “ODM-administered waiver program: program compliance, monitoring and oversight of ODM-administered waiver service providers and ODM-administered waiver program contractors,” sets forth the guidelines for monitoring and oversight to be conducted by ODM and its designees, including the provider oversight contractor; requirements with which providers and contractors must comply as part of the monitoring and oversight process; and ODM sanctioning and enforcement authority. The rule will be proposed for amendment as part of a five-year rule review.

The to be proposed changes are to remove restrictive language.

**Rule 5160-45-11**, entitled “ODM-administered waiver programs: exclusionary periods for disqualifying offenses; certificates; and pardons,” sets forth a tiered system of exclusionary periods for disqualifying offenses. The periods range from five years to permanent exclusion depending upon the type and number of offenses. The rule also sets forth policy regarding conditions under which certain offenders may be able to provide services including pardons, a Certificate of Qualification for Employment issued pursuant to Section 2953.25 of the Revised Code; or a Certificate of Achievement and Employability in an HCBS-related field, issued by the Ohio Department of Rehabilitation and Corrections pursuant to Section 2961.22 of the Revised Code. The rule is being proposed for amendment as part of a five-year rule review.

The following changes are proposed:

- To remove restrictive language.
- To add subcontractors as applicable entities requiring a criminal records check.

**3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

Rule 5160-45-06

Authorized By: 5166.02

Amplifies: 5162.03, 5166.02

Rule 5160-45-07

Authorized By: 5164.342, 5166.02

Amplifies: 109.572, 5162.03, 5164.342, 5166.02

Rule 5160-45-08

Authorized By: 5164.341, 5166.02

Amplifies: 109.572, 109.5721, 5162.03, 5164.341, 5166.02

Rule 5160-45-09

Authorized By: 5166.02

Amplifies: 5166.02, 5166.11

**4. 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.***

Yes. First, for the Centers for Medicare and Medicaid Services (CMS) to approve a 1915(c) home and community-based services (HCBS) waiver, a state must meet certain assurances about the operation of the waiver. These assurances are spelled out in 42 C.F.R. 441.302, and include:

- a) "Health and Welfare -Assurance that necessary safeguards have been taken to protect the health and welfare of the beneficiaries of the services. Those safeguards must include:
  - i) Adequate standards for all types of providers that provide services under the waiver;
  - ii) Assurance that the standards of any State licensure or certification requirements are met for services or for individuals furnishing services that are provided under the waiver."

The to be proposed rules pertain to the administration of the waivers, directly impacting waiver eligibility, provider enrollment and oversight and case management. The to be proposed rules assist the State in assuring the health and welfare of waiver participants, as well as greater availability of and flexibilities for waiver service providers. Providers of HCBS waiver services must be qualified, i.e., only those agencies and persons who meet the state's qualification requirements can provide services to waiver participants. The to be proposed rules will assist the State in assuring the health and welfare of waiver participants by establishing specific qualifications and requirements that providers must meet to render services.

**5. If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

These rules do not exceed federal requirements and are aligned with the CMS-approved waivers. They do not contain provisions not specifically required by the federal government.

**6. 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 public purpose of these regulations is to assure the health and welfare of individuals enrolled in an ODM-administered HCBS waiver as required by 42 C.F.R. 441.302(a) through the provision of services by qualified providers. The State is doing so by updating requirements that providers must meet.

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

Success will be measured through provider's compliance with waiver provider standards. This is evidenced, in part, by few incidents and no adverse findings resulting from structural reviews and investigation of alleged provider occurrences.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No.

### **Development of the Regulation**

9. 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.*

ODM maintains active communication with stakeholders. Stakeholders consist of nursing facility-based waiver providers and participants. To engage a wide population of providers and participants, ODM shared the draft to be proposed rules via email with nearly 10,000 stakeholders and requested their feedback. Additionally, discussions were held, and input was gathered from representatives of the Ohio Council for Home Care & Hospice (OCHCH). ODM maintains an HCBS stakeholder listserv to provide the public with notice of rule changes.

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

The agency received input from a stakeholder requesting to add a requirement within this rule chapter, but the input did not affect the draft regulation to be proposed as the requirement that was requested already exists within the rule chapter. The stakeholder was provided with the information as to where the requirement is located and did not provide any additional input.

11. 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?

No scientific data was used to develop the rules or the measurable outcome of the rules.

12. 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? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to*

*comply.*

No alternative regulations were considered, as these regulations need to align with state and federal requirements and are required by CMS as part of the state assurances for approval of the home and community-based services 1915(c) waiver.

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

The home and community-based services policy staff completed a review of the Ohio Revised Code and the Ohio Administrative Code to ensure there are no other regulations pertaining to these specific rules. These rules were shared with internal provider operations staff and Ohio Department of Aging staff to assist in rule alignment and duplication avoidance. Incorporation by reference was used to align rules and prevent duplication.

**14. 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.**

HCBS waiver participants and service providers will be notified of plans to implement the rules in this package. Notification will occur via a variety of communication methods including ODM's issuance of emails to case management agencies and agency providers and independent providers, and electronic communication via the provider oversight contractor's (PCG) website.

**Adverse Impact to Business**

**15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**

**a. Identify the scope of the impacted business community, and**



The business communities impacted by these rules includes all nursing facility-based waiver service providers of the Ohio Home Care and MyCare Waiver Programs. Additionally, providers of behavioral health respite services within the Ohio Resilience through Integrated Systems and Excellence (OhioRISE) program are subject to proposed rules 5160-44-07 and 5160-44-08 as referenced in rule 5160-59-03.4 OhioRISE: behavioral health respite service.

Under OAC 5160-45-06, providers may be subject to costs related to providing information for structural reviews and any corrective action associated with the results of such reviews. Costs associated with providing informational reports prepared by the Ohio Department of Health for Medicare certification and by other national accreditation bodies varies based on length of report and method of provision. Depending on how many pages that must be copied, agencies would need to consider the following: cost per page, cost of the administrative time, postage and packaging (i.e., certified mail, priority mailing, etc.), tracking to ensure delivery, and any follow-up necessary. The amount could be less than \$1.00 for the letter of certification, or up to and over \$100 depending on the length of reports and plan of correction documents. SOURCE: Ohio Council for Home Care and Hospice and LeadingAge Ohio. Costs may vary. If ODM-administered waiver providers and contractors adhere to the ODM-administered waiver provider requirements, there should be little or no cost of compliance with this review. However, if the provider does not, and an incident or provider occurrence is reported, the provider will be subject to investigation and follow up and could be subject to sanctions that could result in their inability to participate in the Medicaid waiver program.

Under the to be proposed rules 5160-45-07 and 5160-45-08, providers are subject to fees for BCI and FBI record checks and costs associated with administrative time necessary to conduct database checks, request criminal records check and compile personnel records. Under the to be proposed rule 5160-45-09, ODM-administered waiver providers and contractors must submit to federally and state required provider monitoring and oversight by ODM and/or ODM's provider oversight contractor as a condition of participation in the waiver program. Specifically, paragraph (B)(3) will require providers to make all requested information available at the time of review. It also stipulates that at the conclusion of a provider's monitoring and oversight review, ODM or its designee may request that providers submit a plan of correction within a prescribed period. Paragraph (B)(4) contains similar requirements for ODM-administered waiver contractors. Failure to comply with or successfully meet the requirements of this proposed rule may result in additional administrative costs to the provider/contractor, and/or the suspension or termination of a provider's Medicaid provider agreement or a contractor's Medicaid contract. Failure to comply with or successfully meet the requirements of this proposed rule may result in additional administrative costs to the provider/contractor, and/or the suspension or termination of a provider's Medicaid provider agreement or a contractor's Medicaid contract. ODM cannot estimate the cost of compliance as costs will vary depending on the specific monitoring and oversight activities that may be undertaken, the size of the agency, quality of administrative operations, cost of employer time for compliance, and fines, etc. Negative findings or a failure to comply with or successfully meet the requirements of this proposed rule may result in additional administrative costs to the provider/contractor, and/or the suspension or termination of a provider's Medicaid provider agreement or a contractor's Medicaid contract.

- b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

*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.*

ODM asked the Ohio Council for Home Care and Hospice (OCHCH) to quantify the expected adverse impact waiver agencies might experience as a result of implementing the to be proposed rule 5160-45-07. Their estimates are summarized below:

Administrative time conducting the seven database checks required in ORC 5164.342(E). ODM notes that RC 5164.342(E) identifies six databases and also cites “Any other databases, if any, specified in rules authorized by this section” which would include and mark a seventh record check the Ohio Medicaid Provider Exclusion and Suspension List located here: [Provider Exclusion & Suspension List | Medicaid \(ohio.gov\)](#).

OCHCH noted the time spent requesting a criminal records check, logging information on a roster, and compiling personnel records plus administrative time and cost for conducting the seven database reviews is estimated to be \$24/hour. The reviews would take approximately 30 minutes per applicant/employee. The total average cost per applicant/employee to an agency is estimated to be \$120, which also includes administrative cost, employee wages (different pay rates among aides, RNs, LPNs and therapists), employee overtime, travel, BCI fee and FBI fee.

Fees for BCI criminal records check for all applicants considered for employment range from \$27.00-\$45.00 which may vary from county to county. Fees for criminal records check from the FBI for each applicant considered for employment, who has not resided in Ohio for five years is range from \$35.00-\$50.00 which may vary from county to county. Some county vendors offers both checks for a discounted fee ranging \$67.00-\$90.00. BCI accepts and processes FBI background checks.

Independent providers will be responsible for the costs associated with their initial background checks. This is consistent with current practice. Thereafter, ODM will pay the independent provider’s annual \$5 RAPBACK fee. The estimated adverse impact to independent providers includes the costs associated with their own background checks. This is consistent with current statute and practice. Fees for BCI criminal records check for all applicants considered for employment range from \$27.00-\$45.00 which may vary from county to county. Fees for criminal records check from the FBI for each applicant considered for employment, who has not resided in Ohio for five years is range from \$35.00-\$50.00 which may vary from county to county. Some county vendors offers both checks for a discounted fee ranging \$67.00-\$90.00. BCI accepts and processes FBI background checks. BCI accepts and processes FBI background checks. ODM will pay the provider’s annual \$5.00 RAPBACK fee to BCI to participate, and an annual criminal background check will be unnecessary.

Under the to be proposed rule 5160-45-09, ODM-administered waiver providers and contractors must submit to federally and state required provider monitoring and oversight by ODM and/or ODM's provider oversight contractor as a condition of participation in the waiver program. Specifically, paragraph (B)(3) will require providers to make all requested information available at the time of review. It also stipulates that at the conclusion of a provider's monitoring and oversight review, ODM or its designee may request that providers prepare and submit a plan of correction within a prescribed period. Paragraph (B)(4) contains similar requirements for ODM-administered waiver contractors. Failure to comply with or successfully meet the requirements of this proposed rule may result in additional administrative costs to the provider/contractor, and/or the suspension or termination of a provider's Medicaid provider agreement or a contractor's Medicaid contract. ODM cannot estimate the cost of compliance as costs will vary depending on the specific monitoring and oversight activities that may be undertaken, the size of the agency, quality of administrative operations, cost of employer time for compliance, and fines, etc. Negative findings or a failure to comply with or successfully meet the requirements of this proposed rule may result in additional administrative costs to the provider/contractor, and/or the suspension or termination of a provider's Medicaid provider agreement or a contractor's Medicaid contract.

- 16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

No.

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

The assurance of HCBS waiver participants' health and welfare is integral to the Ohio HCBS waiver programs- both at the state and federal levels. Provider participation in this waiver is optional and at the provider's discretion. Compliance with program requirements is required for providers who choose to participate and may result in costs associated with compliance with the requirements of these rules (e.g., training, monitoring and oversight, etc.). Failure to comply with such requirements may result in a provider's inability to be an Ohio HCBS waiver service provider.

### **Regulatory Flexibility**

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

No, not applicable to this program.

**19. 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?**

Not applicable to this program.

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

Providers may contact the Ohio Department of Medicaid (ODM) provider hotline at 1-800- 686-1516.

5160-45-06

**Ohio department of medicaid (ODM) -administered waiver program: structural reviews of providers and investigation of provider occurrences.**

(A) The Ohio department of medicaid (ODM) or its designee ~~shall~~ will continuously monitor every ODM-administered waiver provider. Monitoring activities ~~shall~~ will include, but not be limited to:

- (1) A structural review of compliance with all ODM-administered waiver provider requirements in accordance with paragraph (B) of this rule.
- (2) Investigation of provider occurrences in accordance with paragraph (C) of this rule.

(B) Structural reviews.

- (1) Medicare-certified and otherwise accredited agency providers as defined in rule 5160-45-01 of the Administrative Code are subject to reviews in accordance with their certification and accreditation bodies and may be exempt from a regularly scheduled structural review as determined by ODM. Upon request by ODM or its designee, medicare-certified and otherwise-accredited agency providers, ~~shall~~ will make available within ten business days, all review reports and accepted plans of correction from the certification and/or accreditation bodies.
- (2) All other agency providers are subject to structural reviews by ODM or its designee every two years after the provider begins furnishing billable services.
- (3) All non-agency ODM-administered waiver providers are subject to structural reviews by ODM or its designee during each of the first three years after a provider begins furnishing billable services. Thereafter, and unless otherwise prescribed by either paragraph (B)(4) or (B)(5) of this rule, structural reviews ~~shall~~ will be conducted annually.
- (4) ODM or its designee may conduct biennial structural reviews of a non-agency ODM-administered waiver provider, when all the following apply:
  - (a) There were no findings against the provider during the provider's most recent structural review;
  - (b) The provider was not substantiated to be the violator in an incident described in rule 5160-44-05 of the Administrative Code;

- (c) The provider was not the subject of more than one provider occurrence during the previous twelve months; and
  - (d) The provider does not live with an individual receiving ODM-administered waiver services.
- (5) All ODM-administered waiver providers may be subject to an announced or unannounced structural review at any time as determined by ODM or its designee.
- (6) Structural reviews may be conducted in person between the provider and ODM or its designee or via desk review, and in a manner consistent with paragraph (B)(3) of rule 5160-45-09 of the Administrative Code.
- (7) All structural reviews use an ODM-approved structural review tool.
- (8) Structural reviews ~~shall~~ will not occur while the provider is furnishing services to an individual.
- (9) The structural review process consists of the following activities:
  - (a) Except for unannounced structural reviews, the provider ~~shall~~ will be notified in advance of the review to arrange a mutually acceptable time, date and location for the review. Advance notification ~~shall~~ will also include identification of the time period for which the review is being conducted and a list of the type of documents required for the review.
  - (b) The provider ~~shall~~ will ensure the availability of required documents and maintain the confidentiality of information about individuals enrolled on the ODM-administered waiver.
  - (c) ODM or its designee ~~shall~~ will examine all substantiated incident reports or provider occurrences related to the provider. Documented findings of noncompliance ~~shall~~ will be addressed during the review.
  - (d) The structural review ~~shall~~ will include an evaluation of compliance with Chapter 5160-45 of the Administrative Code and Chapter(s) 5160-44, 5160-46, and/or 5160-58 of the Administrative Code, depending upon the waiver(s) under which the provider is furnishing services.

- (e) A unit of service verification ~~shall~~ will be conducted by ODM or its designee to ensure all waiver services are authorized, delivered and reimbursed in accordance with the approved person-centered services plan for the individual receiving waiver services.
  - (f) The provider's compliance with the home and community-based settings requirements set forth in rule 5160-44-01 of the Administrative Code will be evaluated, which will include interviews with individuals served in the setting.
  - (g) An evaluation ~~shall~~ will be conducted to determine whether the provider has implemented all plans of correction approved since the last review. Failure to successfully complete all plans of correction and/or the existence of repeat violations may lead to additional sanctions including, but not limited to termination of their provider agreement.
  - (h) A final exit interview summarizing the overall outcome of the review will occur between the non-agency provider, or in the case of an agency provider, the agency administrator or his or her designee, and ODM or its designee at the conclusion of the review.
- (10) The exit interview will be followed up with a written report to the provider from ODM or its designee. The report ~~shall~~ will summarize the overall outcome of the structural review, specify the Administrative Code rules that are the basis for which noncompliance has been determined, and outline the specific findings of noncompliance. When findings are indicated, the provider ~~shall~~ will respond in writing to the report in a plan of correction, including any individual remediation.
- (11) ODM, at its sole discretion, may choose to suspend a provider's structural review.

(C) Provider occurrences.

- (1) "Provider occurrence" means any alleged, suspected or actual performance or operational issue by a provider furnishing ODM-administered waiver services that does not meet the definition of an incident as set forth in rule 5160-44-05 of the Administrative Code. Provider occurrences include, but are not limited to alleged violations of provider eligibility and/or service specification requirements, provider conditions of participation, billing issues including overpayments, and medicaid fraud.



- (2) Upon discovery, ODM or its designee ~~shall~~ will investigate provider occurrences including requesting any documentation required for the investigation.
- (3) If ODM or its designee substantiates the provider occurrence, it ~~shall~~ will notify the provider. The notification ~~shall~~ will specify:
  - (a) The provider's action or inaction that constituted the provider occurrence;
  - (b) The Administrative Code rule(s) that support the finding(s) of noncompliance;
  - (c) What the provider ~~must~~ will do to correct the finding(s) of noncompliance, including acknowledgement of technical assistance, required training, and any individual remediation;
- (D) Plans of correction for structural reviews and provider occurrences.
  - (1) The provider ~~must~~ will submit to ODM or its designee a plan of correction for all identified findings of noncompliance, including any individual remediation, within forty-five calendar days after the date on the written report.
  - (2) If ODM or its designee finds the provider's plan of correction acceptable, it ~~shall~~ will acknowledge, in writing, to the provider that the plan addresses the findings outlined in the written report. If ODM or its designee determines that it cannot approve the provider's plan of correction, it ~~shall~~ will inform the provider of this determination, in writing, require that the provider submit a new plan of correction and specify the required actions that ~~must~~ will be included in the plan of correction. The provider ~~must~~ will submit the new plan of correction within the prescribed timeframes, not to exceed forty-five calendar days.
  - (3) ODM permits flexibility with the required timeframes for submission of plans of correction required in this paragraph, so long as it is documented in the provider's file.
- (E) If the possibility of an overpayment is identified through the structural review and/or provider occurrence processes, ODM will conduct a final review, and as appropriate, issue all payment adjustments in accordance with rule 5160-1-19 of the Administrative Code.

(F) ODM may take action against the provider in accordance with rule 5160-45-09 of the Administrative Code for failure to comply with any of the requirements set forth in this rule.

5160-45-07

**ODM-administered waiver programs: criminal records checks involving agency providers.**

(A) Unless otherwise stated in paragraphs (A)(1) and (A)(2) of this rule, this rule sets forth the process and requirements for the criminal records checks of persons under final consideration for [subcontract or](#) employment with a waiver agency, and existing [subcontractors or](#) employees with a waiver agency in a full-time, part-time or temporary position, ~~and~~ who are providing home and community-based services (HCBS) in an Ohio department of medicaid (ODM) -administered waiver. This rule does not apply to:

- (1) Any individual who is subject to a database review or a criminal records check under section ~~3701.88~~[3740.11](#) of the Revised Code and rules adopted thereunder.
- (2) Applicants, [subcontractors](#), and employees of a waiver agency that is also a community-based long term care provider who are subject to database reviews and criminal records checks in accordance with section 173.38 of the Revised Code and rules adopted thereunder.

(B) For the purposes of this rule,

- (1) "Applicant" means a person who is under final consideration for employment with a waiver agency in a full-time, part-time or temporary position that involves providing HCBS.

[\(2\) "Anniversary date" means the day and month of each year, which corresponds to the employee hire date.](#)

~~(2)~~[\(3\)](#) "Chief administrator" means the head of a waiver agency, or his or her designee.

~~(3)~~[\(4\)](#) "Community-based long term care provider" has the same meaning as in section 173.39 of the Revised Code.

~~(4)~~[\(5\)](#) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

~~(5)~~[\(6\)](#) "Department" means the Ohio department of medicaid (ODM).

~~(6)~~[\(7\)](#) "Disqualifying offense" means any of the ~~following:~~ [offenses listed or described in divisions \(A\)\(3\)\(a\) to \(A\)\(3\)\(e\) of section 109.572 of the Revised Code.](#)

- ~~(a) A violation of section 959.13, 959.131, 2903.01, 2903.02, 2903.03, 2903.04, 2903.041, 2903.11, 2903.12, 2903.13, 2903.15, 2903.16, 2903.21, 2903.211, 2903.22, 2903.34, 2903.341, 2905.01, 2905.02, 2905.05, 2905.11, 2905.12, 2905.32, 2905.33, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.24, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2907.33, 2909.02, 2909.03, 2909.04, 2909.22, 2909.23, 2909.24, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.05, 2913.11, 2913.21, 2913.31, 2913.32, 2913.40, 2913.41, 2913.42, 2913.43, 2913.44, 2913.441, 2913.45, 2913.46, 2913.47, 2913.48, 2913.49, 2913.51, 2917.01, 2917.02, 2917.03, 2917.31, 2919.12, 2919.121, 2919.123, 2919.22, 2919.23, 2919.24, 2919.25, 2921.03, 2921.11, 2921.12, 2921.13, 2921.21, 2921.24, 2921.32, 2921.321, 2921.34, 2921.35, 2921.36, 2921.51, 2923.12, 2923.122, 2923.123, 2923.13, 2923.161, 2923.162, 2923.21, 2923.32, 2923.42, 2925.02, 2925.03, 2925.04, 2925.041, 2925.05, 2925.06, 2925.09, 2925.11, 2925.13, 2925.14, 2925.141, 2925.22, 2925.23, 2925.24, 2925.36, 2925.55, 2925.56, 2927.12 or 3716.11 of the Revised Code, felonious sexual penetration in violation of former section 2907.12 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996; or~~
- ~~(b) A violation of section 2923.01, 2923.02, or 2923.03 of the Revised Code when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses listed in paragraph (B)(6)(a) of this rule; or~~
- ~~(c) A violation of an existing or former municipal ordinance or law of the state of Ohio, any other state, or the United States that is substantially equivalent to any of the disqualifying offenses as set forth in paragraph (B)(6)(a) or (B)(6)(b) of this rule.~~
- ~~(7)~~(8) "Employee" means a person employed by a waiver agency in a full-time, part-time, or temporary position that involves providing HCBS.
- ~~(8)~~(9) "Home and community-based services medicaid waiver component" has the same meaning as in section 5166.01 of the Revised Code.
- ~~(9)~~(10) "Retained applicant fingerprint database" or "RAPBACK" means the database maintained by the bureau of criminal investigation (BCI) pursuant to section 109.5721 of the Revised Code that contains the fingerprints of individuals on whom BCI has conducted criminal record checks to determine whether an applicant is ineligible for the medicaid provider agreement pursuant to this rule.

(11) "Subcontractor" means a person or entity who has a formal agreement with a waiver agency to provide HCBS direct-care services.

~~(10)~~(12) "Waiver agency" means an entity that provides HCBS under an ODM-administered waiver program, other than such an entity that is certified under the medicare program. "Waiver agency" does not mean an independent provider as defined in section 5164.341 of the Revised Code or rule 5160-45-08 of the Administrative Code.

(C) No waiver agency ~~shall~~ will employ an applicant, ~~or~~ continue to employ an employee, or utilize a subcontractor in a position that involves providing HCBS in an ODM-administered waiver program if the applicant, ~~or~~ employee, or subcontractor:

(1) Is included on one or more of the following databases:

(a) The system for award management (SAM) maintained by the United States general services administration;

(b) The list of excluded individuals and entities maintained by the office of inspector general in the United States department of health and human services pursuant to section 1128 of the "Social Security Act," 94 Stat. 2619 (1980), 42 U.S.C. 1320a-7, as amended, and section 1156 of the "Social Security Act," 96 Stat. 388 (1982), 42 U.S.C. 1320c-5, as amended, or if using ODM's automated registry check system (ARCS), the medicare exclusion database pursuant to 42 ~~CFR~~ C.F.R. 455.436 (~~as in effect on~~ October 1, ~~2017~~2024);

(c) The Ohio department of developmental disabilities (DODD) online abuser registry established under section 5123.52 of the Revised Code;

(d) The internet-based sex offender and child-victim offender database established under division (A)(11) of section 2950.13 of the Revised Code;

(e) The internet-based database of inmates established under section 5120.66 of the Revised Code;

(f) ~~Is included on the~~The state nurse aide registry established under section 3721.32 of the Revised Code, and ~~there is~~ a statement detailing findings by the director of health that the applicant, ~~or~~ employee, or subcontractor neglected or abused a long-term care facility or

residential care facility resident or misappropriated property of such a resident; or

(g) The Ohio medicaid provider exclusion and suspension list found at: <http://medicaid.ohio.gov>.

(2) Fails to:

(a) Submit to a criminal records check conducted by the bureau of criminal investigation (BCI), including failing to access, complete and forward to the superintendent the form or the standard fingerprint impression sheet; or

(b) Instruct the superintendent of BCI to submit the completed report of the criminal records check directly to the chief administrator of the waiver agency.

(3) Except as provided for in paragraphs (F) and (G) of this rule, the applicant, ~~or~~ employee, or subcontractor has been convicted of, or pleaded guilty to, a disqualifying offense, regardless of the date of the conviction or date of entry of the guilty plea.

(D) Process for conducting criminal records checks.

(1) At the time of each applicant's initial application for employment in a position that involves providing HCBS in an ODM-administered waiver program, the chief administrator of the waiver agency ~~shall~~ will conduct a review of the databases listed in paragraph (C)(1) of this rule to determine whether the waiver agency is prohibited from employing the applicant in that position. The chief administrator of the waiver agency ~~shall~~ will provide the applicant with a copy of any disqualifying information disclosed in the review of the databases.

(2) Except as otherwise noted in paragraph (C)(1) of this rule, the chief administrator of a waiver agency ~~shall~~ will have ~~require~~ each applicant ~~to~~ request ~~that~~ the BCI superintendent conduct a criminal records check with respect to the waiver agency applicant, and pursuant to sections 109.572 and 5164.342 of the Revised Code. The applicant ~~must~~ will provide a set of fingerprints as part of the criminal records check.

(a) If an applicant does not present proof of having been a resident of the state of Ohio for the five-year period immediately prior to the date the

criminal records check is requested, or provide evidence that within that five-year period the superintendent has requested information about the applicant from the federal bureau of investigation (FBI) in a criminal records check, the chief administrator ~~shall~~ will have~~require~~ the applicant ~~to~~ request ~~that~~ the superintendent obtain information from the FBI as part of the criminal records check.

- (b) Even if an applicant presents proof of ~~having been~~being a resident of the state of Ohio for the five-year period, the chief administrator may ~~require~~ have the applicant ~~to~~ request ~~that~~ the superintendent obtain information from the FBI in the criminal records check.
- (3) The chief administrator of a waiver agency ~~shall~~ will provide the following to each applicant for whom a criminal records check is required by this rule:
  - (a) Information about accessing, completing and forwarding to the superintendent the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and the standard fingerprint impression sheet presented pursuant to division (C)(2) of that section; and
  - (b) Written notification that the applicant is to instruct the superintendent to submit the completed report of the criminal records check directly to the chief administrator of the waiver agency.
- (4) Conditional employment.
  - (a) A waiver agency may conditionally employ an applicant for whom a criminal records check is required by this rule prior to obtaining the results of that check, provided that the waiver agency has conducted a review of the databases listed in paragraph (C)(1) of this rule and has determined the waiver agency is not prohibited from employing the applicant in that position. The chief administrator ~~must~~ will have ~~require~~ the applicant ~~to~~ request a criminal records check no later than five business days after he or she begins conditional employment.
  - (b) The waiver agency ~~shall~~ will terminate conditional employment if the results of the criminal records check request, other than the results of any request for information from the FBI, are not obtained within sixty days of the criminal records check request.
- (5) If the results of the criminal records check indicate that the individual has been

convicted of, or has pleaded guilty to any of the disqualifying offenses set forth in paragraph ~~(B)(6)~~ (B)(7) of this rule, and regardless of the date of conviction or the date of entry of the guilty plea, ~~then~~ the waiver agency ~~shall~~ will either:

(a) Terminate his or her employment; or

(b) Choose to employ the individual because he or she meets the conditions set forth in paragraph (F) of this rule.

(6) If the waiver agency determines that two or more convictions or guilty pleas result from or are connected with the same act or result from offenses committed at the same time, they ~~shall~~ will be counted as one conviction or guilty plea.

~~(7) Termination of employment shall be considered just cause for discharge for the purposes of division (D)(2) of section 4141.29 of the Revised Code if the individual makes any attempt to deceive the waiver agency about his or her criminal record.~~

~~(8)~~(7) A waiver agency ~~shall~~ will pay to BCI the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for any criminal records check required by this rule. However, a waiver agency may ~~require~~ have an applicant ~~to~~ pay to BCI the fee for a criminal records check of the applicant. If the waiver agency pays the fee for an applicant, it may charge the applicant a fee not exceeding the amount the waiver agency pays to BCI pursuant to this rule if the waiver agency notifies the applicant at the time of application for employment of the amount of the fee and that, unless the fee is paid, he or she will not be considered for employment.

~~(9)~~(8) Reports of any criminal records checks conducted by BCI in accordance with this rule are not public records for the purposes of section 149.43 of the Revised Code and ~~shall~~ will not be made available to any person other than the following:

(a) The person who is the subject of the criminal records check or the individual's representative;

(b) The chief administrator of the waiver agency that requires the applicant to request the criminal records check or the administrator's representative;

(c) The director of ODM and the staff of the department who are involved in



the administration of the Ohio medicaid program;

- (d) The director of ODA or the director's designee if the waiver agency also is a community-based long-term care agency;
  - (e) An individual who receives, or may receive, waiver services from the person who is the subject of the criminal records check; and
  - (f) Any court, hearing officer or other necessary individual involved in a case dealing with a denial of employment of the applicant, ~~or termination of the employee,~~ or termination of a contract with a subcontractor; employment or unemployment benefits of the applicant, ~~or employee,~~ or subcontractor; or a civil or criminal action regarding the Ohio medicaid program.
- (E) As a condition of ~~continuing to employ~~ continued employment ~~an individual or renewal of a subcontract~~ in a position that involves providing HCBS in an ODM-administered waiver program, the chief administrator of the waiver agency ~~shall will~~ conduct a criminal records check ~~of that employee~~ at least once every five years. ~~according to one of the following three schedules set forth in paragraphs (E)(1) to (E)(3) of this rule. The chief administrator shall follow the same process set forth in paragraphs (D)(1) to (D)(9) of this rule.~~
- ~~(1) If the chief administrator of the waiver agency hired the employee before January 1, 2008, the chief administrator shall conduct a criminal records check of 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 anniversary date every five years after 2013.~~
  - ~~(2) If the chief administrator of the waiver agency hired the employee on or after January 1, 2008, the chief administrator shall conduct a criminal records check of 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 anniversary date every five years after the first fifth year anniversary.~~
  - ~~(3)~~ (1) The chief administrator of the waiver agency may conduct a criminal records check on any employee or subcontractor more frequently than every five years. ~~without any need to conduct a criminal records check according to the schedules set forth in paragraphs (E)(1) and (E)(2) of this rule.~~
  - ~~(4)~~ (2) If the chief administrator of the waiver agency enrolls an employee or subcontractor in RAPBACK, the criminal records check requirements of this

rule are considered to have been met for that employee or subcontractor.

(F) A waiver agency may choose to employ an applicant, ~~or~~ continue to employ an employee, or continue to contract with a subcontractor who has been convicted of, or has pleaded guilty to, a disqualifying offense set forth in paragraph ~~(B)(6)~~(B)(7) of this rule if:

- (1) The applicant, ~~or~~ employee, or subcontractor has satisfied the conditions associated with the exclusionary periods set forth in rule 5160-45-11 of the Administrative Code; or
- (2) The applicant, ~~or~~ employee, or subcontractor has obtained a certificate of qualification for employment issued by a court of common pleas with competent jurisdiction pursuant to section 2953.25 of the Revised Code, and in accordance with rule 5160-45-11 of the Administrative Code; or
- (3) The applicant, ~~or~~ employee, or subcontractor has obtained a certificate of achievement and employability in an HCBS-related field, issued by the Ohio department of rehabilitation and corrections pursuant to section 2961.22 of the Revised Code, and in accordance with rule 5160-45-11 of the Administrative Code; and
- (4) The applicant, ~~or~~ employee, or subcontractor has agreed, in writing, to have the waiver agency inform each potential consumer of the disqualifying offense, and has acknowledged, in writing, that the potential consumer has the right to select or reject to receive services from the applicant, ~~or~~ employee, or subcontractor, prior to commencing service delivery.

(G) A waiver agency may choose to continue to employ an employee or utilize a subcontractor who is otherwise excluded by paragraph ~~(B)(6)~~(B)(7) of this rule if:

- (1) The offense is a tier IV offense as set forth in paragraph (F) of rule 5160-45-11 of the Administrative Code;
- (2) The employee or subcontractor was hired prior to January 1, 2013;
- (3) The conviction or guilty plea occurred prior to January 1, 2013; and
- (4) The waiver agency has considered the nature and seriousness of the offense(s), and attests in writing prior to April 1, 2013, to the character and fitness of the employee or subcontractor based on their demonstrated work performance. The ~~required~~ written attestation ~~shall~~ will be maintained in the employee or

subcontractor's personnel record.

(H) Pardons.

A conviction of, or a plea of guilty to, an offense as set forth in paragraph ~~(B)(6)~~(B)(7) of this rule ~~shall~~ will not prevent an agency from considering an applicant for employment, ~~or an~~ employee, or subcontractor for continued employment if any of the following circumstances apply:

- (1) The applicant, ~~or~~ employee, or subcontractor has been granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code;
- (2) The applicant, ~~or~~ employee, or subcontractor has been granted an unconditional pardon for the offense pursuant to an existing or former law of the state of Ohio, any other state, or the United States, if the law is substantially equivalent to Chapter 2967. of the Revised Code;
- (3) The applicant, ~~or~~ employee, or subcontractor has been granted a conditional pardon for the offense pursuant to Chapter 2967. of the Revised Code, and the condition(s) under which the pardon was granted have been satisfied; or
- (4) The applicant's, ~~or~~ employee's, or subcontractor's conviction or guilty plea has been set aside pursuant to law.

(I) Documentation of compliance. Each waiver agency shall will maintain a roster of applicants, ~~and~~ employee, and subcontractor's, accessible by the director, which includes, but is not limited to:

- (1) The name of each applicant, ~~and~~ employee, and subcontractor;
- (2) The date the applicant, ~~or~~ employee, or subcontractor started work;
- (3) The date the criminal records check request is submitted to BCI;
- (4) The date the criminal records check is received; and
- (5) A determination of whether the results of the check revealed that the applicant, ~~or~~ employee, or subcontractor committed a disqualifying offense(s).

5160-45-08

**ODM-administered waiver programs: criminal records checks involving independent providers.**

(A) This rule sets forth the process and requirements for the criminal records checks of independent providers of home and community-based services (HCBS) in Ohio department of medicaid (ODM) -administered waiver programs.

(B) For the purposes of this rule,

~~(1) "Anniversary date" means the later of the effective date of the provider agreement relating to the independent provider or sixty days after the effective date of section 5164.341 of the Revised Code (September 26, 2003).~~

~~(2)~~(1) "Applicant" means a person who has applied for a medicaid provider agreement to provide HCBS as an independent provider under an ODM-administered waiver program.

~~(3)~~(2) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

~~(4)~~(3) "Disqualifying offense" means any of the ~~following:~~ offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code.

~~(a) A violation of section 959.13, 959.131, 2903.01, 2903.02, 2903.03, 2903.04, 2903.041, 2903.11, 2903.12, 2903.13, 2903.15, 2903.16, 2903.21, 2903.211, 2903.22, 2903.34, 2903.341, 2905.01, 2905.02, 2905.05, 2905.11, 2905.12, 2905.32, 2905.33, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.24, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2907.33, 2909.02, 2909.03, 2909.04, 2909.22, 2909.23, 2909.24, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.05, 2913.11, 2913.21, 2913.31, 2913.32, 2913.40, 2913.41, 2913.42, 2913.43, 2913.44, 2913.441, 2913.45, 2913.46, 2913.47, 2913.48, 2913.49, 2913.51, 2917.01, 2917.02, 2917.03, 2917.31, 2919.12, 2919.121, 2919.321, 2919.22, 2919.23, 2919.24, 2919.25, 2921.03, 2921.11, 2921.12, 2921.13, 2921.21, 2921.24, 2921.32, 2921.123, 2921.34, 2921.35, 2921.36, 2921.51, 2923.12, 2923.122, 2923.123, 2923.13, 2923.161, 2923.162, 2923.21, 2923.32, 2923.42, 2925.02, 2925.03, 2925.04, 2925.041, 2925.05, 2925.06, 2925.09, 2925.11, 2925.13, 2925.14, 2925.141, 2925.22, 2925.23, 2925.24, 2925.36, 2925.55, 2925.56, 2927.12 or 3716.11 of the Revised Code, felonious sexual penetration in violation of former section 2907.12 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996; or~~

~~(b) A violation of section 2923.01, 2923.02, or 2923.03 of the Revised Code when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses listed in paragraph (B)(5)(a) of this rule; or~~

~~(c) A violation of an existing or former municipal ordinance or law of the state of Ohio, any other state, or the United States that is substantially equivalent to any of the disqualifying offenses set forth in paragraph (B)(5)(a) or (B)(5)(b) of this rule.~~

~~(5)~~(4) "Effective date of provider agreement" means the month in which the initial provider agreement was entered into between ODM and the independent provider.

~~(6)~~(5) "Home and community-based services medicaid waiver component" has the same meaning as in section 5166.01 of the Revised Code.

~~(7)~~(6) "Independent provider" means a person who has a medicaid provider agreement to provide HCBS as an independent provider in an ODM-administered waiver program. The term "independent provider" is interchangeable with the term "non-agency provider" in Chapters 5160-44, 5160-46 and 5160-58 of the Administrative Code.

~~(8)~~(7) "Retained applicant fingerprint database" or "RAPBACK" means the database maintained by the bureau of criminal investigation (BCI) pursuant to section 109.5721 of the Revised Code that contains the fingerprints of individuals on whom BCI has conducted criminal record checks to determine whether an applicant is ineligible for a medicaid provider agreement pursuant to this rule.

~~(9)~~(8) "Superintendent" means superintendent of the BCI.

(C) ODM or its designee ~~shall~~ will deny an applicant's application for a medicaid provider agreement, and ~~shall~~ will immediately take steps to terminate an independent provider's medicaid provider agreement, if any of the following applies:

(1) After the applicant is given the information and notification required by ~~paragraphs~~ paragraph (D)(6) ~~(D)(6)(a), (D)(6)(b) and (D)(6)(c)~~ of this rule, the applicant fails to do any of the following:

(a) Access, complete, and forward to the superintendent of BCI the form

prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code, or the standard impression sheet prescribed pursuant to division (C)(2) of that section;

(b) Instruct the superintendent to submit the completed report of the criminal records check directly to ODM or its designee.

(2) Except as provided in paragraph (F) of this rule, the applicant or independent provider is found by a criminal records check to have been convicted of, or pleaded guilty to, a disqualifying offense, regardless of the date of the conviction, or the date of entry of the guilty plea. If ODM determines that two or more convictions or guilty pleas result from or are connected with the same act or result from offenses committed at the same time, they ~~shall~~ will be counted as one conviction or guilty plea.

(3) The applicant or independent provider fails to comply with the provisions of this rule.

(D) Process for conducting criminal records checks.

(1) Each applicant, at the time of initial application for a medicaid provider agreement, ~~shall~~ will provide a set of his or her fingerprints, and a criminal records check ~~shall~~ will be conducted as a condition of ODM's approving the application.

(2) Each applicant and independent provider ~~shall~~ will be subject to the database check requirements set forth in rule 5160-1-17.8 of the Administrative Code.

(3) If the applicant or independent provider does not present proof of having been a resident of the state of Ohio for the five-year period immediately prior to the date the criminal records check is requested, or provide evidence that within that five-year period the superintendent has requested information about the applicant or independent provider from the federal bureau of investigation (FBI) in a criminal records check, ODM or its designee ~~shall~~ will request that the superintendent obtain a criminal records check from the FBI as part of the criminal records check.

(4) Even if an applicant or independent provider presents proof of having been a resident of the state of Ohio for the five-year period, ODM or its designee may request the superintendent obtain information from the FBI in the criminal records check.

- (5) In order to maintain active provider status, each independent provider ~~must~~ will have his or her fingerprints submitted to BCI to be maintained in RAPBACK. ODM ~~shall~~ will pay BCI any reasonable fees associated with receiving notifications under division (D) of section 109.5721 of the Revised Code.
- (6) ODM or its designee ~~shall~~ will provide the following to each applicant and independent provider for whom a criminal records check is required by this rule:
- (a) Information about accessing, completing and forwarding to the superintendent the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and the standard fingerprint impression sheet prescribed pursuant to division (C)(2) of that section;
  - (b) Information about accessing, completing and forwarding to the superintendent the information required for RAPBACK pursuant to section 109.5721 of the Revised Code.
  - (c) Written notification that the applicant or independent provider is to instruct the superintendent to submit the completed report of the criminal records check directly to ODM or its designee.
- (7) Each applicant and independent provider ~~shall~~ will pay BCI the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check conducted on his or her behalf pursuant to paragraphs (D)(1), (D)(3) and (D)(4) of this rule.
- (8) Reports of any criminal records checks conducted by BCI in accordance with this rule are not public records for the purposes of section 149.43 of the Revised Code and ~~shall~~ will not be made available to any person other than the following:
- (a) The person who is the subject of the criminal records check or his or her representative;
  - (b) The director of ODM and the staff of ODM involved in the administration of the Ohio medicaid program;
  - (c) ODM's designee;
  - (d) An individual who receives, or may receive, waiver services from the

person who is the subject of the criminal records check; and

(e) A court, hearing officer or other necessary individual involved in a case dealing with either a denial or termination of a medicaid provider agreement related to the criminal records check, or a civil or criminal action regarding the Ohio medicaid program.

(E) An individual may choose to receive waiver services from an applicant or independent provider who has been convicted of, or pleaded guilty to, a disqualifying offense ~~set forth in paragraph (B)(5) of this rule~~ if:

- (1) The applicant or independent provider has satisfied the conditions associated with the exclusionary periods set forth in rule 5160-45-11 of the Administrative Code; or
- (2) The applicant or independent provider has obtained a certificate of qualification for employment issued by a court of common pleas with competent jurisdiction pursuant to section 2953.25 of the Revised Code, and in accordance with rule 5160-45-11 of the Administrative Code; or
- (3) The applicant or independent provider has obtained a certificate of achievement and employability in an HCBS-related field issued by the Ohio department of rehabilitation and corrections pursuant to section 2961.22 of the Revised Code, and in accordance with rule 5160-45-11 of the Administrative Code.

(F) Pardons.

A conviction of, or a plea of guilty to, an offense as set forth in paragraph ~~(B)(5)~~ (B)(3) of this rule ~~shall~~ will not prevent a consumer from choosing to receive services from an applicant or independent provider if any of the following circumstances apply:

- (1) The applicant or independent provider has been granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code;
- (2) The applicant or independent provider has been granted an unconditional pardon for the offense pursuant to an existing or former law of the state of Ohio, any other state, or the United States, if the law is substantially equivalent to Chapter 2967. of the Revised Code;
- (3) The applicant or independent provider has been granted a conditional pardon for



the offense pursuant to Chapter 2967. of the Revised Code, and the condition(s) under which the pardon was granted have been satisfied; or

- (4) The applicant's or independent providers' conviction or guilty plea has been set aside pursuant to law.

5160-45-09

**ODM-administered waiver program: program compliance, monitoring and oversight of ODM-administered waiver service providers and ODM-administered waiver program contractors.**

(A) The Ohio department of medicaid (ODM) is responsible for the ongoing monitoring and oversight of all ODM-administered waiver service providers and all ODM-administered waiver contractors in order to ~~assure~~ ensure providers' and contractors' compliance with ODM-administered waiver program requirements.

(B) Monitoring and oversight of ODM-administered waiver service providers.

(1) ODM and its designee, as applicable, ~~shall~~ will conduct ongoing monitoring and oversight of ODM-administered waiver service providers to verify that each provider is:

(a) Complying with the terms and conditions of its medicaid provider agreement, the ODM-administered waiver program, and all applicable federal, state and local laws and regulations.

(b) Ensuring the health and welfare of individuals to whom they are providing services.

(c) Ensuring the provision of quality services as part of the ODM-administered waiver program.

(2) Monitoring and oversight includes, but is not limited to the following:

(a) Interviews with individuals enrolled on the ODM-administered waivers and/or their authorized representative or legal guardian, providers, and contractor staff.

(b) Visits to the provider's place of business or another agreed upon location for the purpose of examining or collecting records, reviewing documentation, and conducting structural reviews.

(c) Reviews of electronic and/or hard copy records and billing documentation, etc.

(3) Providers ~~shall~~ will fully cooperate with all requests made by ODM, and/or its designee as part of the monitoring and oversight process. This includes, but is not limited to the following:

- (a) Upon request, arranging for or otherwise furnishing an adequate workspace for ODM and/or its designee to conduct visits as described in paragraph (B)(2)(b) of this rule. This workspace ~~must~~ will be in a secure location which protects sensitive and confidential information from being disclosed contrary to relevant confidentiality and information disclosure laws.
  - (b) Making all requested information available at the time of review.
  - (c) Ensuring the availability of supervisors and/or other staff who may possess relevant information to answer questions.
- (4) At the conclusion of a provider's monitoring and oversight review:
- (a) ODM or its designee ~~shall~~ will notify the provider in writing of its findings. ODM or its designee may do any of the following:
    - (i) Request that the provider prepare and submit to ODM or its designee a plan of correction within the prescribed time frame. The plan of correction ~~shall~~ will set forth the action(s) that ~~must~~ will be taken by the provider to correct each finding, and establish a target date by which the corrective action ~~must~~ will be completed. If ODM or its designee does not approve the submitted plan of correction, ODM or its designee may request a new plan of correction or take other ~~appropriate~~ action as deemed appropriate by ODM.
    - (ii) Provide technical assistance to the provider.
    - (iii) Refer the provider to other entities for further investigation. Such entities include, but are not limited to:
      - (a) The surveillance and utilization review section (SURS) or other program area(s) within ODM;
      - (b) The Ohio attorney general;
      - (c) The Ohio department of health (ODH);
      - (d) The Ohio board of nursing (OBN);

(e) Other licensing, certification or credentialing bodies, as appropriate; and

(f) Law enforcement.

(b) ODM may:

(i) Issue the provider a notice of operational deficiency (NOD) based upon its or its designee's review findings.

(ii) Propose suspension or termination of the provider's medicaid provider agreement pursuant to section 5164.38 of the Revised Code and rules 5160-1-17.5 and 5160-1-17.6 of the Administrative Code.

(C) Monitoring and oversight of ODM-administered waiver contractors.

(1) ODM ~~shall~~ will conduct ongoing monitoring and oversight of the ODM-administered waiver contractors to verify that each contractor is:

(a) Complying with the terms and conditions of its contract and all applicable federal, state and local laws and regulations.

(b) Ensuring the health and welfare of individuals to whom they are providing services.

(c) Ensuring the provision of quality services as part of the ODM-administered waiver program.

(2) Monitoring and oversight may include, but are not limited to the following:

(a) Interviews with individuals enrolled on the ODM-administered waivers and/or their authorized representative or legal guardian, providers and contractor staff.

(b) Visits to the contractor's place of business or another agreed upon location for the purpose of examining or collecting records, reviews of documentation, structural reviews.

(c) Reviews of electronic and/or hard copy records and billing

documentation, etc.

(3) Contractors ~~shall~~ will fully cooperate with all requests made by ODM as part of the monitoring and oversight process. This includes, but is not limited to the following:

(a) Upon request, arranging for or otherwise furnishing an adequate workspace for ODM to conduct visits as described in paragraph (C)(2)(b) of this rule. This workspace ~~must~~ will be in a secure location which protects sensitive and confidential information from being disclosed contrary to relevant confidentiality and information disclosure laws.

(b) Making all requested information available at the time of review, and in accordance with the terms of compliance with contracts.

(c) Ensuring the availability of supervisors and/or other staff who may possess relevant information to answer questions.

(4) At the conclusion of a contractor's monitoring and oversight review, ODM ~~shall~~ will notify the contractor of its findings. Additionally, if determined appropriate, ODM may do any of the following:

(a) Request that the contractor prepare and submit to ODM a plan of correction within the prescribed time frame. The plan of correction ~~shall~~ will set forth the action(s) that ~~must~~ will be taken to correct each finding, and establish a target date by which the corrective action ~~must~~ will be completed. If ODM does not approve the submitted plan of correction, ODM may request a new plan of correction or take other ~~appropriate~~ action as deemed appropriate by ODM.

(b) Provide technical assistance to the contractor.

(c) Refer the contractor to other entities for further investigation. Such entities include, but are not limited to:

(i) SURS;

(ii) The Ohio attorney general;

(iii) ODH;

(iv) OBN;

(v) Other licensing, certification or credentialing bodies, as appropriate;  
and

(vi) Law enforcement.

(d) Issue the contractor a NOD based upon review findings.

(e) Terminate the contractor's contract pursuant to its terms.

5160-45-11

**ODM-administered waiver programs: exclusionary periods for disqualifying offenses; certificates; and pardons.**

- (A) Except as set forth in paragraph (H) of this rule, a waiver agency may only employ an applicant, or continue to employ an employee, or continue to contract with a subcontractor who has been convicted of or pleaded guilty to an offense listed in ~~paragraph (B)(6) of rule 5160-45-07 of the Administrative Code~~ divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code in a position ~~involving~~ providing home and community-based services (HCBS) to an individual enrolled on an Ohio department of medicaid (ODM) -administered waiver pursuant to the exclusionary timeframes set forth in this rule.
- (B) Except as set forth in paragraph (H) of this rule, an applicant, ~~or~~ independent provider, or subcontractor who has been convicted of or pleaded guilty to an offense listed in ~~paragraph (B)(5) of rule 5160-45-08 of the Administrative Code~~ divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code may be selected by an individual enrolled on an ODM-administered waiver program to provide them with HCBS pursuant to the timeframes set forth in this rule.
- (C) Tier I. Permanent exclusion.
- (1) No waiver agency ~~shall~~ will employ an applicant, ~~or~~ continue to employ an employee, or utilize a subcontractor in a position that involves providing HCBS to an individual, nor ~~shall~~ will an independent provider provide HCBS to an individual, if the applicant, employee, or subcontractor or independent provider has been 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 [in persons](#));
- (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, as that offense existed prior to September 3, 1996);
- (u) 2907.31 (disseminating matter harmful to juveniles);
- (v) 2907.32 (pandering obscenity);
- (w) 2907.321 (pandering obscenity involving a minor [or impaired person](#));
- (x) 2907.322 (pandering sexually-oriented matter involving a minor [or impaired person](#));
- (y) 2907.323 (illegal use of a minor in nudity-oriented material or



performance);

(z) 2909.22 (soliciting or providing support for 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 (C)(1) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or

(2) 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 of the Revised Code ~~(illegal use of supplemental nutrition assistance program (SNAP) or women, infants, and children (WIC) program benefits)~~ and paragraph (D)(1)(m) of this rule; or.

(3) 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 ~~(B)(1) or (B)(2)~~ (C)(1) or (C)(2) of this rule.

(D) Tier II. Ten-year exclusionary period.

(1) No waiver agency ~~shall~~ will employ an applicant, ~~or~~ continue to employ an employee, or utilize a subcontractor in a position that involves providing HCBS to an individual, nor ~~shall~~ will an independent provider provide HCBS to an individual, for a period of ten years from the date the applicant, employee, subcontractor, or independent provider was fully discharged from all imprisonment, probation or parole, if the applicant, employee, subcontractor, or independent provider has been convicted of or pleaded guilty to, an offense in any of the following sections of the Revised Code:

(a) 2903.04 (involuntary manslaughter);

(b) 2903.041 (reckless homicide);

- (c) 2905.04 (child stealing, as that offense existed prior to July 1, 1996);
- (d) 2905.05 ([criminal](#) child enticement);
- (e) 2905.11 (extortion [and sexual extortion](#));
- (f) 2907.21 (compelling prostitution);
- (g) 2907.22 (promoting prostitution);
- (h) 2907.23 (enticement or solicitation to patronize a prostitute; procurement of a prostitute for another);
- (i) 2909.02 (aggravated arson);
- (j) 2909.03 (arson);
- (k) 2911.01 (aggravated robbery);
- (l) 2911.11 (aggravated burglary);
- (m) 2913.46 (illegal use of SNAP or WIC program benefits);
- (n) 2913.48 (worker's compensation fraud);
- (o) 2913.49 (identity fraud);
- (p) 2917.02 (aggravated riot);
- (q) 2923.12 (carrying concealed weapons);
- (r) 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);
- (s) 2923.123 (illegal conveyance, possession, or control of deadly weapon or ordnance into courthouse);

- (t) 2923.13 (having weapons while under a disability);
  - (u) 2923.161 (improperly discharging a firearm at or into a habitation or school);
  - (v) 2923.162 (discharge of firearm on or near prohibited premises);
  - (w) 2923.21 (improperly furnishing firearms to minor);
  - (x) 2923.32 (engaging in a pattern of corrupt activity);
  - (y) 2923.42 (participating in a criminal gang);
  - (z) 2925.02 (corrupting another with drugs);
  - (aa) 2925.03 (trafficking, aggravated trafficking in drugs);
  - (bb) 2925.04 (illegal manufacture of drugs, ~~or~~ illegal cultivation of marijuana or methamphetamine offenses);
  - (cc) 2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs);
  - (dd) 3716.11 (placing harmful or hazardous objects in food or confection); or
  - (ee) If related to an offense under paragraph (D)(1) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or
- (2) 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 (D)(1) of this rule.
- (3) If an applicant, employee, subcontractor, or independent provider has been convicted of multiple disqualifying offenses, including an offense listed in paragraph (D)(1) or (D)(2) of this rule, and another offense or offenses listed in paragraph (D)(1), (D)(2), (E)(1), (E)(2), (F)(1) or (F)(2) of this rule, the applicant, employee, subcontractor, or independent provider is subject to a fifteen-year exclusionary period beginning on the date the applicant, employee, subcontractor, or independent provider was fully discharged from all imprisonment, probation or parole for the most recent offense.

(E) Tier III. Seven-year exclusionary period.

(1) No waiver agency ~~shall~~ will employ an applicant, ~~or~~ continue to employ an employee, or utilize a subcontractor in a position that ~~a~~ involves providing HCBS to an individual, nor ~~shall~~ will an independent provider provide HCBS to an individual, for a period of seven years from the date the applicant, employee, subcontractor, or independent provider was fully discharged from all imprisonment, probation or parole, if the applicant, employee, subcontractor, or independent provider has been convicted of or pleaded guilty to, an offense in any of the following sections of the Revised Code:

- (a) 959.13 (cruelty to animals);
- (b) 959.131 (prohibitions concerning companion animals);
- (c) 2903.12 (aggravated assault);
- (d) 2903.21 (aggravated menacing);
- (e) 2903.211 (menacing by stalking);
- (f) 2905.12 (coercion);
- (g) 2909.04 (disrupting public services);
- (h) 2911.02 (robbery);
- (i) 2911.12 (burglary);
- (j) 2913.47 (insurance fraud);
- (k) 2917.01 (inciting to violence);
- (l) 2917.03 (riot);
- (m) 2917.31 (inducing panic);
- (n) 2919.22 (endangering children):

- (o) 2919.25 (domestic violence);
  - (p) 2921.03 (intimidation);
  - (q) 2921.11 (perjury);
  - (r) 2921.13 (falsification, falsification in a theft offense, falsification to purchase a firearm, or falsification to obtain a concealed handgun license);
  - (s) 2921.34 (escape);
  - (t) 2921.35 (aiding escape or resistance to lawful authority);
  - (u) 2921.36 (illegal conveyance of weapons, drugs or other prohibited items onto the grounds of a detention facility or institution);
  - (v) 2925.05 (funding drug trafficking);
  - (w) 2925.06 (illegal administration or distribution of anabolic steroids);
  - (x) 2925.24 (tampering with drugs);
  - (y) 2927.12 (ethnic intimidation); or
  - (z) If related to an offense under paragraph (E)(1) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or
- (2) 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 (E)(1) of this rule.
- (3) If an applicant, employee, subcontractor, or independent provider has been convicted of multiple disqualifying offenses, including an offense listed in paragraph (E)(1) or (E)(2) of this rule, and another offense or offenses listed in paragraph (E)(1), (E)(2), (F)(1) or (F)(2) of this rule, the applicant, employee, subcontractor, or independent provider is subject to a ten-year exclusionary period beginning on the date the applicant, employee, subcontractor, or independent provider was fully discharged from all imprisonment, probation or parole for the most recent offense.

(F) Tier IV. Five-year exclusionary period.

(1) No waiver agency ~~shall~~ will employ an applicant, ~~or~~ continue to employ an employee, or utilize a subcontractor in a position that involves providing HCBS to an individual, nor ~~shall~~ will an independent provider provide HCBS to an individual, for a period of five years from the date the applicant, employee, subcontractor, or independent provider was fully discharged from all imprisonment, probation or parole, if the applicant, employee, subcontractor, or independent provider has been convicted of or pleaded guilty to, an offense in any of the following sections of the Revised Code:

- (a) 2903.13 (assault);
- (b) 2903.22 (menacing);
- (c) 2907.09 (public indecency);
- (d) 2907.24 (soliciting);
- (e) 2907.25 (prostitution);
- (f) 2907.33 (deception to obtain matter harmful to juveniles);
- (g) 2911.13 (breaking and entering);
- (h) 2913.02 (theft);
- (i) 2913.03 (unauthorized use of a vehicle);
- (j) 2913.04 (unauthorized use of computer, cable or telecommunication property);
- (k) 2913.05 (telecommunication fraud);
- (l) 2913.11 (passing bad checks);
- (m) 2913.21 (misuse of credit cards);
- (n) 2913.31 (forgery - forging identification cards or selling or distributing

- forged identification cards);
- (o) 2913.32 (criminal simulation);
- (p) 2913.41 (defrauding a rental agency or hostelry);
- (q) 2913.42 (tampering with records);
- (r) 2913.43 (securing writings by deception);
- (s) 2913.44 (personating an officer);
- (t) 2913.441 (unlawful display of law enforcement emblem);
- (u) 2913.45 (defrauding creditors);
- (v) 2913.51 (receiving stolen property);
- (w) 2919.12 (unlawful abortion);
- (x) 2919.121 (unlawful abortion upon minor);
- (y) 2919.123 (unlawful distribution of an abortion-inducing drug);
- (z) 2919.124 (unlawful performance of a drug-induced abortion);
- (aa) 2919.23 (interference with custody);
- (bb) 2919.24 (contributing to the unruliness or delinquency of a child);
- (cc) 2921.12 (tampering with evidence);
- (dd) 2921.21 (compounding a crime);
- (ee) 2921.24 (disclosure of confidential information);
- (ff) 2921.32 (obstructing justice);

- (gg) 2921.321 (assaulting or harassing a police dog, horse, or service animal);
  - (hh) 2921.51 (impersonation of peace officer);
  - (ii) 2925.09 (illegal administration, dispensing, distribution, manufacture, possession, selling, or using of any dangerous veterinary drug);
  - (jj) 2925.11 (drug possession, other than a minor drug possession offense);
  - (kk) 2925.13 (permitting drug abuse);
  - (ll) 2925.22 (deception to obtain a dangerous drug);
  - (mm) 2925.23 (illegal processing of drug documents);
  - (nn) 2925.36 (illegal dispensing of drug samples);
  - (oo) 2925.55 (unlawful purchase of pseudoephedrine product);
  - (pp) 2925.56 (unlawful sale of pseudoephedrine product);
  - (qq) If related to an offense under paragraph (F)(1) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or
- (2) 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 (F)(1) of this rule.
- (3) If an applicant, employee, subcontractor, or independent provider has been convicted of multiple disqualifying offenses listed in paragraph (F)(1) or (F)(2) of this rule, the applicant, employee, subcontractor, or independent provider is subject to a seven-year exclusionary period beginning on the date the applicant, employee, subcontractor, or independent provider was fully discharged from all imprisonment, probation or parole for the most recent offense.
- (G) Tier V. No exclusionary period.
- (1) A waiver agency may employ an applicant, ~~or~~ continue to employ an employee,



or continue to utilize a subcontractor in a position that involves providing HCBS to an individual, and an independent provider may provide HCBS to an individual if the applicant, employee, subcontractor, or independent provider has been convicted of or pleaded guilty to, any of the following offenses:

- (a) 2919.21 (non-support/contributing to non-support of dependents);
  - (b) 2925.11 (drug possession that is a minor drug possession offense); or
  - (c) 2925.14 (drug paraphernalia); or
  - (d) 2925.141 (illegal use or possession of marihuana drug paraphernalia); or
- (2) 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 (G)(1) of this rule.

(H) Certificates.

Except for individuals who have been convicted of or pleaded guilty to, a disqualifying offense set forth in paragraph (C) of this rule, a waiver agency may employ an applicant, ~~or~~ continue to employ an employee, or utilize a subcontractor in a position involving providing HCBS to an individual, and an individual may choose to receive services from an applicant or independent provider, if the applicant, employee, subcontractor, or independent provider has been issued either of the following:

- (1) A certificate of qualification for employment issued by a court of common pleas with competent jurisdiction pursuant to section 2953.25 of the Revised Code; or
- (2) A certificate of achievement and employability in an HCBS-related field, issued by the Ohio department of rehabilitation and corrections pursuant to section 2961.22 of the Revised Code.

(I) Pardons.

- (1) A conviction of, or plea of guilty to, an offense as set forth in paragraph (B)(6) of rule 5160-45-07 of the Administrative Code ~~shall~~ will not prevent a waiver agency from considering an applicant for employment, ~~or~~ an employee for continued employment, or a subcontractor if any of the following

circumstances apply:

(a) The applicant, ~~or~~ employee, or subcontractor has been granted:

- (i) An unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code;
- (ii) 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; or
- (iii) 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.

(b) The applicant's, ~~or~~ employee's, or subcontractor's conviction or guilty plea has been set aside pursuant to law.

(2) A conviction of, or plea of guilty to, an offense as set forth in paragraph (B)(5) of rule 5160-45-08 of the Administrative Code ~~shall~~ will not prevent an individual from choosing to receive services from an applicant or independent provider, if any of the following circumstances apply:

(a) The applicant or independent provider has been granted:

- (i) An unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code;
- (ii) 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; or
- (iii) 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.

(b) The applicant's or independent provider's conviction or guilty plea has been set aside pursuant to law.