

H.B.59 replaced "173.394" with "173.38."

*DRAFT - NOT YET FILED ***

173-9-01

Introduction and definitions.

(A) Introduction: Chapter 173-9 of the Administrative Code implements sections 173.27 and 173.38 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) For a direct-care position, "applicant" means a person that a responsible party is giving final consideration for hiring into a paid direct-care position that is full-time, part-time, or temporary, even if an employment service refers the person to the responsible party. "Applicant" includes a person that a consumer has under final consideration for hiring as a consumer-directed or self-directed provider. "Applicant" means the self-employed person if the person is applying to become an ODA-certified non-agency or independent provider under Chapter 173-39 of the Administrative Code or if the person is bidding to win a provider agreement under Chapter 173-3 or 173-4 of the Administrative Code. "Employee" 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.

(7) "Criminal records" has the same meaning as "results of the criminal records check," "results," and "report" in sections 173.27 and 173.38 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

In response to FAQs about the volunteer exemption, ODA added "paid" throughout the rules, and simplified the exemption language in this rule and in rule 173-9-02.

New terms allow ODA to use simpler phrasing in the rules.

responsible parties that conduct criminal records checks. Criminal records originate from BCII unless the context indicates that the criminal records originate from the FBI.

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(8) "Criminal records check" ("check") 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 and 173.38 of the Revised Code and Chapter 173-9 of the Administrative Code.

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

New from H.B.59: "Direct-care position" not "Direct care"

(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.

New exemption from H.B.59

(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) For a direct-care position, "employee" means a person that a responsible party hired into a paid direct-care position that is full-time, part-time, or temporary, even if an employment service initially referred the person to the responsible party. "Employee" includes a consumer-directed provider and a self-directed provider. "Employee" means the self-employed person if the person is an ODA-certified non-agency or independent provider under Chapter 173-39 of the Administrative Code or if the person is party to a provider agreement under Chapter 173-3 or 173-4 of the Administrative Code. "Employee" does not include a volunteer.

In response to 2 FAQs--one on conditional hiring, and another on the applicability of the chapter to 3 positions that don't require checks as employees, ODA is replacing "employ or continue to employ," "employment," "terminate," etc. with "hire," "retain," "fire," and "release."

- (13) "FBI" means "federal bureau of investigation."
- (14) "Fire" has the same meaning as "terminate" in sections 173.27 and 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 173.38 of the Revised Code when "employ" regards hiring an applicant.
- (16) "Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code.
- (17) "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 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.

New terms allow ODA to use simpler phrasing in the rules.

New term from H.B.59

- (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) 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) 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) When considering a self-employed applicant for ODA-certification under Chapter 173-39 of the Administrative Code, a self-employed person already ODA-certified under Chapter 173-39 of the Administrative Code, a self-employed bidder for a provider agreement under Chapter 173-3 or 173-4 of the Administrative Code, a self-employed person already in a provider agreement under Chapter 173-3 or 173-4 of the Administrative Code, a self-employed sub-contractor entering into a contract with another responsible party, or a self-employed sub-contractor already in a contract with another responsible party, "responsible party" means the self-employed business owner.

(24) "Retain" has the same meaning as "continue to employ" in sections 173.27 and 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 responsible party that enters into a contract with another 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 another 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.

New from H.B.59: AAAs, PAAs, and sub-contractors are responsible parties.

See earlier comment for "fire."

New terms allow ODA to use simpler phrasing in the rules.

H.B.59 required ODA to define this term. ODA did so by exempting sub-contractors who only supply goods and services directly to another responsible party (e.g., wholesale kitchen, cement company, office supplies)

(29) "Waiver agency" has the same meaning as in section 5164.342 of the Revised Code.



H.B.59 changed
the reference.