173-9-04 **General requirements.**

(A) Free databases first: If the free database reviews under rule 173-9-03 of the Administrative Code do not disqualify an applicant or employee from providing ombudsman services or direct care, the responsible entity shall request that BCII conduct a criminal records check on the applicant or employee as a condition of employing the applicant or employee in a position that involves providing ombudsman services or direct care.

ON WHOM IS A CRIMINAL RECORDS CHECK REQUIRED?

OMBUDSMAN SERVICES	APPLICANTS	CURRENT EMPLOYEES
All ombudsman services	Yes	Yes

DIRECT CARE	APPLICANTS	CURRENT EMPLOYEES
Only delivers home-delivered meals	Yes	No
Only has access to consumers' personal records	Yes	No
Only provides certain once-ever services	Yes	No
All other direct care	Yes	Yes

(B) On whom is a criminal records check required?:

(1) Applicants: The responsible entity shall conduct a criminal records check on each person who is an applicant under final consideration for employment for an ombudsman-services or direct-care position. The responsible entity shall do this even if paragraph (B)(2)(b) of this rule does not require the responsible entity to check the person as an employee.

(2) Current employees:

(a) At least once every five years: Except as provided for in paragraph (B)(2)(b) of this rule, the responsible entity shall conduct a criminal records check on each employee who provides ombudsman services or direct care at least once every five years according to one of the following three schedules:

(i) Five years for pre-2008: If the responsible entity hired the employee before January 1, 2008, the responsible entity 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 of the date of hire every five years after 2013. (For example, if the responsible entity hired an employee on February 1, 2007, the responsible entity shall conduct a criminal records check on the employee no later than thirty days after February 1, 2013, no later than thirty days after February 1, 2018, and so on.) If the responsible entity is a non-agency provider of direct-care services, the date of hire is the date the responsible entity was certified by ODA. If the responsible entity is a self-employed provider, the date of hire is the date the responsible entity entered into a provider agreement with ODA (or ODA's designee).

(ii) Five years for 2008-present: If the responsible entity hired the employee on or after January 1, 2008, the responsible entity 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 of the date of hire every five years after the first fifth-year anniversary of the date of hire. (For example, if the responsible entity hired an employee on February 1, 2011, the responsible entity shall conduct a criminal records check on the employee no later than thirty days after February 1, 2016, no later than thirty days after February 1, 2021, and so on.) If the responsible entity is a non-agency provider of direct-care services, the date of hire is the date the responsible entity was certified by ODA. If the responsible entity is a self-employed provider, the date of hire is the date the responsible entity entered into a provider agreement with ODA (or ODA's designee).

(iii) More frequently than five years: If the responsible entity conducts criminal records checks on an employee more frequently than every five years, the responsible entity is not responsible for conducting criminal records checks according the the five-year anniversaries of the employee's date of hire. If the responsible entity is a non-agency provider of direct-care services, the date of hire is the date the responsible entity was certified by ODA. If the responsible entity is a self-employed provider, the date of hire is the date the responsible entity entered into a provider agreement with ODA (or ODA's designee).

(b) Exemptions: A responsible entity that provides direct-care services is not required to conduct a criminal records check on a direct-care employee if the only type of direct care that the employee provides is:

(i) Delivering home-delivered meals;

(ii) Having access to a consumer's personal records (e.g., an employee working in a responsible entity's office who does not enter a consumer's home or an employee of a personal emergency response system's central monitoring station who does not enter a consumer's home); or,

(iii) Providing a one-time chore service, home maintenance service, home modification service, home repair service, or pest control. If the responsible entity only provides one episode of the service for an ODA-administered program, the responsible entity is not subject to ongoing criminal records checks. But, the responsible entity is subject to ongoing criminal records checks if the responsible entity returns to a consumer's residence to provide subsequent episodes of service or provides an episode of service to another consumer in an ODA-administered program.

(3) Reverification: Pursuant to division (D) of section 109.572 of the Revised Code, if any person has requested a criminal records check of an applicant or employee in the past year, a responsible entity may request a reverification of the criminal record from BCII. The reverification of a criminal records check has the same validity as a criminal records check.

(C) Notification: The responsible entity shall inform each applicant of the following at the time of initial application for employment in a position to provide ombudsman services or direct care (or referral to a responsible entity that provides direct-care services by an employment service):

(1) Free database reviews: Rule 173-9-03 of the Administrative Code requires the responsible entity to review free databases to determine if the responsible entity is prohibited from employing the applicant in a direct-care position.

(2) Criminal records checks: Unless the free database reviews reveal that the applicant may not be employed in a direct-care position:

(a) The responsible entity is required to conduct a criminal records check to determine if the responsible entity is prohibited from employing the applicant in a direct care position; and,

(b) The applicant is required to provide a set of the applicant's fingerprint impressions as part of a criminal records check.

(3) Frequency: If the responsible entity employs the applicant, as a condition of continued employment, the responsible entity shall conduct the free database reviews listed in rule 173-9-03 of the Administrative Code and shall request criminal records checks to determine if the responsible entity is prohibited from employing the applicant in a direct-care position.

(4) Fees:

(a) If applicable, the fee required under paragraph (F)(2) of this rule.

(b) Any fees authorized under division (C)(2) of section 109.572 of the Revised Code that are associated with obtaining fingerprint impressions.

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

(E) Forms and fingerprints:

(1) The responsible entity shall provide each applicant with the form and fingerprint impression sheet required to conduct a criminal records check, which may be tangible, electronic, or both tangible and electronic. If the responsible entity requests that BCII include information from the FBI in the criminal records check report, the responsible entity shall also provide the applicant with the form necessary to obtain the FBI's information; and,

(2) The responsible entity shall forward the completed form(s) and fingerprint impression sheet to BCII for processing.

(F) Investigation fees:

(1) The responsible entity shall pay BCII the fee prescribed under division (C)(3) of section 109.572 of the Revised Code for each criminal records check.

(2) The responsible entity may charge an applicant a fee so long as the fee does not exceed the amount the responsible entity pays to BCII, but only if:

(a) The responsible entity notified the applicant at the time of initial application of the amount of the fee and that, unless the fee was paid, the responsible entity would not consider the applicant for employment; and,

(b) The medical assistance program established under Chapter 5111. of the Revised Code does not reimburse the responsible entity for the fee.

(G) Employment-service exemption: Pursuant to division (G) of section 173.394 of the Revised Code, a responsible entity that provides direct-care services is not required to request a criminal records check of an applicant or employee under paragraph (B) of this rule if the applicant or employee was referred to the responsible entity by an employment service that refers applicants to responsible entities to fill full-time, part-time, or temporary positions involving direct care and:

(1) The employment service provides the responsible entity with a criminal records check report on the applicant or employee that was conducted no more than one year before the applicant's or employee's referral and the criminal records check report demonstrates that the applicant or employee was not convicted of a disqualifying offense; or, the report demonstrates that the applicant or employee was convicted of a disqualifying offense, but the responsible entity chooses to hire the applicant under rule 173-9-07 of the Administrative Code; or,

(2) Pursuant to division (H)(1)(b) of section 173.394 of the Revised Code, the employment service or the applicant provides the responsible entity with a letter from the employment service, that is on the employment service's letterhead, that is dated and signed by a supervisor or another designated official of the employment service, and that states that the employment service has requested a criminal records check on the applicant, that the requested criminal records check will include a determination of whether the applicant has been convicted of a disqualifying offense, that, as of the date set forth on the letter, the employment service had not received the criminal records check report, and that, when the employment service receives the report, it promptly will send a copy of it to the responsible entity. If the responsible entity employs an applicant conditionally under this paragraph, it shall also comply with the requirements for conditional employment under rule 173-9-05 of the Administrative Code.

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