



Department of Aging

John Kasich, Governor
Bonnie K. Burman, Sc.D., Director

LONG-TERM CARE
CRIMINAL RECORDS CHECKS

UNOFFICIAL INDEX OF OHIO LAWS
This index does not replace reviewing the law to determine compliance.
Revised on May 7, 2015

OHIO REVISED CODE	OHIO ADMIN CODE	STATE DEPT	JOB POSITION	RESPONSIBLE PARTY	REVIEW DATABASES	OPEN SEALED RECORDS	PRE-HIRE, CERT, or CONTRACT	POST-HIRE, CERT, or CONTRACT	UNIFORM RULES ¹	WEBCHECK MACHINE FINGERPRINT CODES	
										BCII	FBI
§173.27	Chapter 173-9	ODA	Paid ombudsman position	SLTCO, RLTCO	Yes	Yes	Yes	Yes	Yes	173 27	Special ²
§173.38	Chapter 173-9	ODA	Paid direct-care position serving one or more persons in the Alzheimer's Respite, Older Americans Act, PACE, or PASSPORT Programs	Agency provider, sub-contractor, AAA, PAA, or consumer who directs a consumer-directed provider	Yes	Yes	Yes	Yes ³	Yes	173 38	Special ² (173 41 ⁴)
§173.381	Chapter 173-9	ODA	Self-employed provider serving one or more persons in the Alzheimer's Respite, Older Americans Act, PACE, or PASSPORT Programs	AAA or PAA	Yes	Yes	Yes	Yes ³	Yes	173 38 <i>Future=173 381?</i> DON'T USE 5164 341	Special ² (173 41 ⁴)
§3701.881	Chapter 3701-60	ODH	Paid or volunteer direct care in Medicare-certified home health agency	Medicare-certified home health agency	Yes	Yes	Yes	Yes ³	Yes	3701 881	3701 881
§3712.09	Chapter 3701-13	ODH	Paid direct care in hospice or pediatric hospice respite	Hospice or pediatric respite provider	No	Yes	Yes	No	No	3721 09	3721 09
§3721.121	Chapter 3701-13	ODH	Paid direct care in a nursing facility or residential care facility	Nursing facility or residential care facility	No	Yes	Yes	No	No	3721 121 ⁵	3721 121 ⁵
§5119.34	5122-30-31 5122-33-28 5122-35-11	ODMHAS	Owner, operator, employee, or volunteer position	Residential facility	Yes	No	Yes	Yes	No	NO ORC	Special ²
§5123.081	5123:2-2-02	ODDD	Paid or volunteer direct-services position	Provider, sub-contractor, county board, or ODDD	Yes	Yes	Yes	Yes	Yes	5123 081	Special ² (5126 28 ⁶)
§5123.169 §5123.1610(J)	5123:2-2-02	ODDD	Supported living certificate holder	Certificate holder	Yes	Yes	Yes	Yes	Yes	5123 169	Special ²
§5164.31 [42 CFR 455.434]	5160-1-17.8	ODM	≥5% ownership/control of a Medicaid provider agency ⁷	Agency provider	Yes ⁸	No	Yes	Yes	No	NO ORC	Special ²
§5164.34 ⁹	No Rule Adopted	ODM	Providers of Medicaid state plan services	ODM or Provider	No Rule Adopted	Yes	No Rule Adopted			5164 34	Special ²
§5164.341	5160-45-08 5160-45-11	ODM	Independent provider of HCBS to one or more people in ODM-admin. Medicaid waiver program	ODM	Yes	Yes	Yes	Yes	Yes	5164 342	Special ²
§5164.342	5160-45-07 5160-45-11	ODM	Paid or volunteer position providing HCBS to one or more people in ODM-admin. Medicaid waiver program	Agency provider	Yes	Yes	Yes	Yes	Yes	5164 341	Special ²

¹ All "yes" rules are uniform in reviewing databases, opening sealed records, 60-day conditional hiring periods, requiring pre- and post- criminal records checks, disqualifying offenses, standards for holding job position if disqualified. The "yes" rules don't have uniformity in the job descriptions that require checks, criteria for proving residency, or deadlines for providing fingerprints.

² BCII's 12/18/2013 edition of the FBI codes does not have a code for this job position. BCII is working with FBI to develop an updated list. Contact BCII for assistance or updates.

³ Rules 173-9-04 and 173-9-04.1 make exceptions to post-hire checks for those who only deliver meals, those who only have access to consumer's information (e.g., office and kitchen staff), and those who provide a once ever service. Rule 3701-60-02 makes exceptions to post-hire checks for those who only work in an office and do not see individuals in their homes on a routine basis. Review the rules for details.

⁴ Use "173 41" as the FBI reason code for a direct-care position that involves serving a person who is enrolled in the PASSPORT Program.

⁵ The code is "173 38" for an applicant or employee for an adult day center that furnishes services to persons who are enrolled in the Alzheimer's Respite, Choices, Older Americans Act, PACE, or PASSPORT Programs.

⁶ For ODDD employees, use "5126 28." Contact BCII for assistance or updates.

⁷ Federally-required provider screening when applying to become a Medicaid provider and subsequent screenings.

⁸ Rule 5160-1-17.8 may require checking different databases than other agency's rules.

⁹ The statute permits, but does not require, ODM to require reviewing databases and checking criminal records. ODM has not adopted a rule to require either.

CONDITIONAL HIRING¹⁰

OHIO REVISED CODE	OHIO ADMIN CODE	STATE DEPT	JOB POSITION	RESPONSIBLE PARTY	REVIEW DATABASES BEFORE CONDITIONAL HIRE?	FINGERPRINTS			MAX DAYS TO WAIT FOR BCII
						IF USING WEBCHECK	IF USING IMPRESSION SHEETS		
						SINGLE STEP DEADLINE FOR APPLICANT TO PROVIDE FINGERPRINTS TO BCII	STEP 1 DEADLINE FOR APPLICANT TO PROVIDE FINGERPRINTS TO RESPONSIBLE PARTY	STEP 2 DEADLINE FOR RESPONSIBLE PARTY TO PROVIDE FINGERPRINTS TO BCII	
§173.27(F)	173-9-05	ODA	Paid ombudsman position	SLTCO, RLTCO	Yes	Before conditional hire	Before conditional hire	5 th business day after conditional hire	60
§173.38(H)	173-9-05	ODA	Paid direct-care position serving one or more persons in an ODA-administered program	Agency provider, sub-contractor, AAA, PAA, or consumer who directs a consumer-directed provider	Yes	Before conditional hire	Before conditional hire	5 th business day after conditional hire	60
§173.381	173-9-05	ODA	Self-employed provider serving one or more persons in an ODA-administered program	AAA or PAA	No conditional status ¹¹				
§3701.881(G)	3701-60-05	ODH	Paid or volunteer direct care in Medicare-certified home health agency	Medicare-certified home health agency	Yes	Before conditional hire	Before conditional hire	5 th business day after conditional hire	60
§3712.09 (C)(2)	3701-13-04	ODH	Paid direct care in hospice or pediatric hospice respite	Hospice or pediatric respite provider	No	No mention	Before conditional hire	5 th business day after conditional hire	30
§3721.121 (C)(2)	3701-13-04	ODH	Paid direct care in a nursing facility or residential care facility	Nursing facility or residential care facility	No	No mention	Before conditional hire	5 th business day after conditional hire	30
§5119.34 (K)(3)	5122-30-31 5122-33-28 5122-35-11	ODMHAS	Owner, operator, employee, or volunteer position	Residential facility	Yes	No mention			60
§5123.081(G)	5123:2-2-02	ODDD	Paid or volunteer direct-services position	Provider, sub-contractor, county board, or ODDD	Yes	No mention			60
§5123.169 §5123.1610(J)	5123:2-2-02	ODDD	Supported living certificate holder	Certificate holder	Yes	No mention			60
§5164.31 [42CFR455.434]	5160-1-17.8	ODM	≥5% ownership/control of a Medicaid provider agency	Agency provider	Yes	30 th day after applying	No mention		
§5164.34 ¹²	No Rule Adopted	ODM	Providers of Medicaid state plan services	ODM or Provider	No Rule Adopted				
§5164.341	5160-45-08	ODM	Independent provider of HCBS to one or more people in ODM-admin. Medicaid waiver program	ODM	No conditional status ¹³				
§5164.342(G)	5160-45-07	ODM	Paid or volunteer position providing HCBS to one or more people in ODM-admin. Medicaid waiver program	Agency provider	Yes	5 th business day after conditional hire	No mention		

¹⁰ When an applicant is referred by an employment service (i.e., temp. service, staffing agency), certain statutes (e.g., 173.38, 3701.881, 3712.09, and 3721.121) require special handling that this table doesn't cover.

¹¹ Nevertheless, rule 173-9-04.1 requires the self-employed provider to provide fingerprints upon application or bid to initiate a criminal records check. AAA/PAA won't approve the application or bid until it reviews the criminal records.

¹² The statute permits, but does not require, ODM to require reviewing databases and checking criminal records. ODM has not adopted a rule to require either.

¹³ Nevertheless, rule 5160-45-08 requires the independent provider to provide fingerprints upon application to initiate a criminal records check. ODM won't approve the application until it reviews the criminal record.

SHARING CRIMINAL RECORDS

OHIO REVISED CODE	OHIO ADMIN COD	DOES STATE LAW AUTHORIZE SHARING CRIMINAL RECORDS WITH...														
		Subjects of Checks?	Subjects' Reps? (e.g., an attorney)	Provider?	Providers' Parent Companies or Sister Locations?	Employment Services? (e.g., temp. agencies, staffing agencies)	ODA + Designees?	ODH?	ODMHAS?	ODoDD + Designees? (e.g., County Boards)	ODM?	ODM's Designees?	Individual receiving goods or services?	Courts et al?	Board of Nursing for Medication Aid Cert.?	Any state/local gov't or private entity with subjects' consent?
§173.27(G)	173-9-08	Yes	Yes	NA	NA	NA	Yes	No	No	No	No	No	No	Yes	No	No
§173.38(I)	173-9-08	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Limited ¹⁴	No	No	Yes	No	No
§173.381(G)	173-9-08	Yes	Yes	Yes ¹⁵	NA	NA	Yes	No	No	No	Limited ¹⁶	No	No	Yes	No	No
§3701.881(H)	3701-60-08	Yes	Yes	Yes	Yes	Yes	Limited ¹⁷	Yes	No	No	Limited ¹⁸	No	No	Yes	No	No
§3712.09(E)	3701-13-07	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No	No	Yes	No	No
§3721.121(E)	3701-13-07	Yes	Yes	Yes	Yes	Yes	Limited ¹⁹	No	No	No	No	No	No	Yes	Yes	No
§5119.34(K)(3)	5122-30-31(G) 5122-33-28(G) 5122-35-11(G)	Yes	Yes	Yes	No	No	No	No	Yes	No	No	No	No	Yes	No	No
§5123.081(I)	5123:2-2-02	Yes	Yes	Yes	No	No	→	→	→	Yes	→	→	No	Yes	→	Yes
§5123.169(F) §5123.1610(J)	5123:2-2-02	Yes	Yes	Yes	No	No	→	→	→	Yes	→	→	No	Yes	→	Yes
§5164.31 [42CFR455.434]	5160-1-17.8	Topic Not Covered in ORC or OAC														
§5164.34(I) ²⁰	No Rule Adopted	Yes	Yes	Yes	No	No	No	No	No	No	Yes	Yes	Yes	Yes	No	No
§5164.341(E)	5160-45-08	Yes	Yes	Yes ¹³	NA	NA	No	No	No	No	Yes	Yes	Yes	Yes	No	No
§5164.342(H)	5160-45-07	Yes	Yes	Yes	No	No	Limited ²¹	No	No	No	Yes	No	Yes	Yes	No	No

→ §5123.081 explicitly authorizes sharing criminal records with ODoDD, county boards, and courts; but also authorizes sharing with any other state/local government agency or any private entity with the subject's written consent.

¹⁴ The authority to share exists only for providers or sub-contractors who are also waiver agencies; however, §173.38 only applies to agencies, so actually not limited. For self-employed (i.e., "independent" and "non-agency") providers, see the row for §173.381.

¹⁵ In this case, the provider is the also the subject of the records.

¹⁶ The authority to share exists regarding self-employed providers who furnish services in a Medicaid waiver program (even if not an ODM-administered program).

¹⁷ The authority to share exists only for HHAs that are also community-based long-term care agencies or employment services that staff community-based long-term care agencies.

¹⁸ The authority to share exists only for HHAs are also waiver agencies or employment services that staff waiver agencies. The section refers to the definition of "waiver agency" in §5164.342, which in turn, explicitly states that self-employed providers (i.e., independent providers) are not waiver agencies.

¹⁹ The authority to share exists only for facilities that are also community-based long-term care providers.

²⁰ The statute permits, but does not require, ODM to require reviewing databases and checking criminal records. ODM has not adopted a rule to require either.

²¹ The authority to share exists only for waiver agencies that are also community-based long-term care providers or sub-contractors. §5164.342 also explicitly states that self-employed providers (i.e., "independent providers") are not waiver agencies. However, §5164.342 only applies to agencies.

CROSS-REFERENCES

BETWEEN STATUTES & CHAPTER 173-9

TOPIC	§109.572 (by division)	§109.5721 (by division)	§173.27 (by division)	§173.38 (by division)	§173.381 (by division)	RULE(S)
Definitions (Key terms = “applicant,” “employee,” and “responsible party”)			(A)	(A)	(A)	173-9-01
Limited applicability of §§ 173.38 and 173.381: No <i>post-hire</i> checks for office, kitchen, or central monitoring station positions, meal delivery, or providers who furnish only one episode of service ever. ²²				(K)(2)(c)	(I)(1)(b)	173-9-02 173-9-03 173-9-03.1 173-9-04 173-9-04.1
Inapplicability of §§ 173.27, 173.38, 173.381: No <i>pre-hire</i> or <i>post-hire</i> checks for positions that are (1) volunteer, (2) drivers of county transit systems, regional transit authorities, or regional transit commissions, (3) legal services, (4) residential care facilities, (5) Medicare certified home health aides, or (6) only serve persons who are enrolled in an ODM-administered Medicaid waiver program. Other statutes may require checks for these positions, but §§ 173.27, 173.38, and 173.381 do not. ²³			(A)(1) (A)(4)	(A)(1) (A)(8) (B) (K)(1)(b)	(B) (I)(1)(b)	173-9-01 173-9-02 173-9-03 173-9-03.1 173-9-04 173-9-04.1
Database reviews			(B) (D) (J)(1)(a)	(C) (E) (K)(1)(a)	(C) (E) (I)(2)(a) (I)(2)(c)	173-9-03 173-9-03.1
Inform applicant that checks are required for hiring/contracts			(C)	(D)	(D)	173-9-04 173-9-04.1
Inform applicant at time of application that paying the fee is a condition for hiring.			(E)(3)	(F)(3)(a)	NA	173-9-04
BCII & FBI criminal record checks			(E)	(F)	(F)	173-9-04 173-9-04.1
How often to review databases and check criminal records ²⁴		Rapback open to “private parties” (<i>i.e.</i> , providers)	(J)(2)(b)	(K)(2)(c)	(I)(2)(b)	173-9-03 173-9-03.1 173-9-04 173-9-04.1
Employment service (<i>e.g.</i> , temp agency, staffing agency)				(G)	NA	173-9-04
Conditional hiring			(F)	(H)	NA	173-9-05
Disqualifying offenses	(A)(3)					173-9-06
Opening sealed records	(B)(1)					
Standards for hiring a person with a disqualifying offense on record			(J)(2)(d)	(K)(2)(e)	NA	173-9-07
Standards for certifying or entering into a provider agreement with a self-employed provider with a disqualifying offense on record			NA	NA	(I)(2)(c)	173-9-07.1
Sharing criminal records			(G)	(I)	(G)	173-9-08
Immunity from negligent hiring			(H)	(J)	(H)	173-9-09
Rules			(J)	(K)	(I)	Chapter 173-9
Fingerprint codes	Not in statute	Not in statute	Not in statute	Not in statute	Not in statute	Not in rule

²² Please see the rules for details.

²³ Please see the rules for details.

²⁴ Subscribing to ARCS and rapback satisfies the less-than-5-year schedules in rules 173-9-04 and 173-9-04.1.