



THE PUBLIC'S COMMENTS & ODA'S RESPONSES

ODA thanks all who submitted comments during the public comment period.

Rules: New Chapter 173-9 to replace rule 173-9-01 and most of 173-14-14, plus collateral changes in rules 173-3-06, 173-14-14, 173-39-02, 173-39-03, 173-39-05, 173-39-05.1, 173-39-07, 173-40-06, and 173-42-06.

Period rules posted on ODA's website: August 31, 2012 to September 20, 2012

Date of this document: October 25, 2012, Revised November 7, 2012.

CHAPTER 173-9 of the ADMINISTRATIVE CODE

BUSINESS IMPACT ANALYSIS

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
1	<p>As mentioned by a number of other stakeholders, the requirements will have a significant cost to providers and should be met with additional focus on increased reimbursement or reduced costs on providers. I suggest reducing the costs of provider audits by allowing providers to submit to one audit for a program (such as PASSPORT) rather than an audit for each region.</p> <p>Chris Hendriksen, President VRI</p>	<p>On December 21, 2011, Attorney General Mike DeWine wrote the following to ODA and other state agencies: "[I]t is paramount to the safety of ... vulnerable citizens that we prohibit certain types of criminals from entering into patients' homes." This letter initiated the legislation in H.B.487 (129th G.A.) and the subsequent rules.</p> <p>As the legislature passed H.B.487 and as the state proposed to adopt rules, we have been aware of the costs involved. The new set of requirements would create direct costs for providers (<i>i.e.</i>, the cost of conducting criminal records checks on current employees) and would increase administrative burdens on providers. With this in mind, in the proposed new rules, ODA and the Depts. of Developmental Disabilities, Health, and Job and Family Services have proposed measures that seek to protect the safety of vulnerable citizens while minimizing expenses to providers, including:</p> <ul style="list-style-type: none"> • Creating the same standards for all four state agency's programs. • Phasing in the requirements to check current employees. • Not requiring providers to conduct criminal records checks on employees if free databases already disqualify them from employment. • Excluding certain low-risk positions from the requirements to undergo criminal records checks as current employees. One is an employee whose direct care only involves delivering meals. The other is an employee

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		<p>whose direct care only involves having access to consumer's personal information. That would prevent many administrative staff members and also members of central monitoring stations from the requirements to undergo ongoing criminal records checks.</p> <ul style="list-style-type: none"> • Allowing the provider to pass the cost along to the applicant or employee who is being checked. <p>You have recommended an additional way to reduce administrative costs. The rule that would be involved in such a reform is rule 173-39-04 of the Administrative Code (provider structural compliance reviews). Because the rule is not germane to this rule project, ODA may take the recommendation into consideration for an upcoming project.</p> <p>Regarding increased reimbursement rates for Medicaid-funded programs:</p> <p>The state's last effort to amend the rates was associated with the state's biennial operating budget under H.B.153 (129th G.A.). The state has not yet released any proposals for the upcoming 2014-2015 biennial budget regarding rates. Stay tuned to the Office of Health Transformation's budget initiatives webpage for information as it develops.</p> <p>If the upcoming biennial budget does require Medicaid reimbursement rate changes, the Ohio Dept. of Job and Family Services (JFS) will set the rates for ODA's programs that use Medicaid funds in rules 5101:3-1-06.1 (PASSPORT), 5101:3-1-06.4 (Choices), and 5101:3-1-06.5 of the Administrative Code (Assisted Living).</p> <p>Regarding increased rates for programs that are not Medicaid-funded: The provider competitively bids for a contract with the AAA. The bidders set the rate in such a process, not ODA. If the provider's cost of doing business rises, the provider should submit a bid that reflects the true cost of doing business.</p>

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2	<p>There are no funds to assist agencies with this additional expense and oversight. We were part of the Business Impact Analysis, which noted the direct cost to be over \$3,000,000 to conduct a round of criminal records checks. However, this Analysis did not account for the indirect costs, such as lost wages and administrative costs. Further work by Black Stone, Interim Healthcare, and the Ohio Council for Home Care and Hospice found that the total cost would be \$89 per check for an aide, a staggering amount when our reimbursement rates have only had two increases over the past 12 years.</p> <p>Jenny Sand Home Care by Black Stone</p>	<p>ODA's business impact analysis accounted for indirect costs that a provider may face. To develop the business impact analysis, ODA conducted case studies of providers, including Home Care by Black Stone. We noted the indirect costs for specific providers that we analyzed.</p> <p>In the business impact analysis, ODA did not include the estimates prepared by the Ohio Council for Home Care and Hospice, Interim, and Black Stone at an August 22, 2012 stakeholder meeting. Those figures were for more for <i>Medicare-certified home health care</i>. They factored in costs of RNs and therapists. ODA pays for the similar <i>personal care service</i>, which primarily involves a personal care aide going to the home. The pay of RNs and therapists would be higher than that of a PCA. ODA was able to explain indirect costs in the business impact analysis without trying to start with figures for Medicare-certified home health, then adjusting them to fit personal care.</p> <p>Also, please see ODA's response to comment #1.</p>
3	<p>While we appreciate the staggering of times for past employees in the same rule to eliminate overloading the system; we do think there is a significant administrative cost.</p> <p>Jean Thompson, Executive Director Ohio Assisted Living Association</p>	<p>Please see ODA's responses to comment #1.</p>
4	<p>This is a cost to the PAA's and to the provider during a time when we are operating on tight budget.</p> <p>Requiring the CBC to be re-done every five years will be an increase in the cost for the provider to do business.</p> <p>This is an added cost and our providers have recently had a cut in their reimbursement rates, this may result in losing providers.</p> <p>Kathleen M. Geise, RN, Quality Assurance Manager Catholic Social Services of the Miami Valley</p>	<p>A provider and two area agencies on aging that are also PASSPORT Administrative Agencies asked for ODA to require employees of AAAs and PAAs to be checked in the same manner that providers' direct-care employees are checked. (See comments #23, #24, and #25.)</p> <p>If AAAs' employees undergo ongoing criminal records checks, the cost of conducting the checks will consume more of the administrative funds that ODA gives to the AAAs and PAAs.</p> <p>Section 173.27 and 173.394 of the Revised Code allow the AAAs and PAAs to pass the cost on to the applicants and employees.</p> <p>Please see ODA's response to comment #1 regarding provider's reimbursement rates.</p>

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5	<p>Home health providers have long scratched our heads at States implementation of record check laws for health care professionals. It felt irresponsible for the State not to protect adults receiving care between the ages of 18-59. The laws on the book not only varied by state agency but ignore a large population of vulnerable citizens. So, we applaud the Administration's effort to make the regulations more consistent and protect ALL Ohioians not just children and older adults.</p> <p>However, the rules as written go too far. This is very disappointing. I feel this is a classic case of big government imposing unfunded mandates that offer little to no value for citizens. I worry that the administration is 'adding' to the legislations rules that go far beyond the scope of fixing the issues that existed with the record checks.</p> <p>Historically, our organization has always gone above and beyond what the law requires. We did background checks before the law existed, we did electronic checks to get results quicker, and we implemented mandatory FBI checks for ALL staff not just those that were in Ohio for 5 years. We see the value in record checks and believe organizations that don't do them the right way should be held accountable. However, our experience shows that we learn of offenses committed by employees and can address those appropriately. An additional check at 5 years does nothing but drive up provider cost. We have seen employees with clean records commit offenses against consumers, and those offenses occur within the first year of employment, not year 4. Employees who have been in good standing for 5 years should not have to go through a record check.</p> <p>I strongly believe this rule goes against the principles of what the Governor outlined by establishing the Common Sense Initiative (CSI). These rules should be closely scrutinize by JCARR because they are costly bring little to no value. Fix what is broken and stop there don't make rules just for the sake of making rules.</p> <p>David Tramontana, CEO Home Care by Black Stone</p>	<p>We appreciate the value that you see in criminal records checks and commend you on your dedication to ensuring that your workforce is one that offers safety to the consumers.</p> <p>Please see ODA's response to comment #1.</p>
6	<p>If the state adds these requirements, it is important that the providers that follow the requirements are rewarded for their compliance and that providers that do not meet requirements are not awarded new business. Too often, these types of requirements are added with additional cost and administration, but the providers that do not meet requirements face no penalties or reduction in business, so the result is that businesses following the rules are penalized by higher costs, while non-compliant providers are unaffected.</p> <p>Chris Hendriksen, President VRI</p>	<p>Section 173.391 of the Revised Code and rule 173-9-05 of the Administrative Code already allow ODA to take the measures that you recommend.</p>

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7	<p>While we appreciate the staggering of times for past employees in the same rule to eliminate overloading the system; we do think there is a significant administrative cost.</p> <p>Jean Thompson, Executive Director Ohio Assisted Living Association</p>	<p>Please see ODA's responses to comment #1.</p>
8	<p>In addition, these rules will have a greater impact on small organizations than on big organizations. Small organizations can not separate out those who just document from those who interact with clients. These rules are weighted to cause disproportional harm to small organizations while aiding larger ones.</p> <p>Mike Turner, Executive Director United Seniors of Athens County</p>	<p>ODA estimates that the experience of providers could vary depending on each provider's organization structure, not upon the size of the provider's workforce.</p> <p>If a provider employs administrative staff that do not provide any direct care other than having access to consumers' personal information, the provider is not required to conduct ongoing criminal records checks on those employees after they're hired.</p> <p>We may assume that a larger provider is more likely to have such administrative staff. One larger provider, Home Care by Black Stone, indicated that they will need to hire at least one new administrative staffer to comply with these rules at an approximate cost of \$40,000/year. In such a case, it seems that any savings this larger provider would see from not checking the criminal records of the new administrative employee (\$36/year) would be offset by the cost of the new office staffer's salary (\$40,000/year).</p> <p>If larger and smaller providers assign administrative duties to a comparable percentage of their workforce, the costs of conducting criminal records checks would be proportional. (e.g., 5% of the workforce may not require criminal records checks because the 5% only performs direct care that involves having access to consumers; records.)</p> <p>We may assume that smaller providers are more likely to not have administrative employees who exclusively perform administrative duties. While having no employees who exclusively perform administrative duties would require a greater percentage of a small provider's employees to have ongoing criminal records checks than a provider who uses exclusive administrative employees, the smaller provider would end up having fewer employees to pay.</p>

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9	<p>It appears by creating the "community exemption" process this is simply another means for people to "pay the government" to have their records cleared. I disagree with this and believe this could be both problematic and a liability for the State of Ohio. If costs are paid and an exemption is granted I believe a portion of these fees should be provided (reimbursed) to the employer that employs the individual...not the local court or State to help off set this unfunded mandate and to assist with meeting additional costs and expenses associated with conducting more criminal background checks. In addition, how many times can an offender obtain a "community exemption"? If there is no language to limit or prohibit how many times you can obtain an exemption I would think this would simply create a "repeat offender" environment if there is no penalties enforced. If someone creates a criminal act....they should not be able to work with the elderly population and/or children and other vulnerable populations. In addition, I do not feel that it is wise to create another "hoop" just for the sake of improving the State's poor job employment ratings.</p> <p>Shon Gress, Executive Director Guernsey County Senior Citizens Center, Inc.</p>	<p>By "community exemption," we believe you're referring to the certificates of qualification for employment that S.B.337 (129th G.A.) created.</p> <p>S.B.337 explicitly sought to help those with criminal records who have had life changes find work again. The bill's solution was to have a judge—the same public official who issues criminal sentences—issue a certificate if he or she agrees that a person who is disqualified by state rules, such as ours, from working in a field, such as direct care, could work without posing a danger to the consumers.</p> <p>Please see ODA's response to comment #1 regarding "unfunded mandates."</p>

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10	<p>Under this proposal if a current employee is found to have one of the "newly added offenses" since their initial employment and they are in-effect "terminated" as a result...how does this help job growth and freedom and flexibility of Ohio employers? More importantly, would the individual qualify for unemployment compensation? How does terminating a high-functioning and productive employee who now because of a newly added criminal offense is no longer permitted to work benefit job growth in Ohio, especially when the employer and state will now have to shuffle more paperwork and pay out additional costs and benefits for the unemployed? To assist the employer I believe language should be added to either maintain "on-site employer discretion" or exempt the employer from having to pay unemployment benefits if this is a mandate by the State.</p> <p>Shon Gress, Executive Director Guernsey County Senior Citizens Center, Inc.</p>	<p>H.B.487 (129th G.A.) did increase the list of crimes that would disqualify an employee providing direct care in ODA's programs from 55 to 130. H.B.487 created a similar increase for the programs of the Depts. of Developmental Disabilities and Health. The Dept. of Job and Family Services already had an extensive list of disqualifying crimes.</p> <p>Although H.B.487 gave each of the four state agencies the same, longer list of disqualifying offenses, it did give each agency the ability to adopt a rule to explain circumstances under which a person has a disqualifying criminal record may work. Division (B) of section 751.31 of the H.B.487 also required the four state agencies to adopt the same standard. Compared to the current standard, the proposed new standard bars people with certain convictions more so, and people with other convictions less so, as follows:</p> <ul style="list-style-type: none"> • Many more crimes disqualify a person—although a person who has most of the disqualifying offenses may work under certain circumstances. • Some crimes that previously did not permanently bar a person from providing direct care would under the proposed rules. (e.g., 2903.105 (permitting child abuse), 2903.16 (failing to provide for a functionally-impaired person); 2903.341 (patent endangerment); 2905.32 (human trafficking); 2909.24 (terrorism); and 2913.40 (Medicaid fraud). Also, some crimes that only created a permanent bar if they were sexually-oriented are now a permanent bar (e.g., 2905.01 (kidnapping)). In all, the proposed rules establish 29 of the 130 crimes as permanent bars. • Some crimes that previously created a permanent bar for a person against providing direct care now allow them to do so under certain circumstances. (e.g., repeat theft offenses, repeat violent offenses, and involuntary manslaughter). • Additionally, minor drug possession offenses no longer disqualify a person from a direct-care position. <p>Because the more-common offenses are drug and theft charges, there is an easing in the new rules on employability.</p>

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11	<p>The Ohio Council for Home Care & Hospice (Ohio Council) is commenting on the draft rules as follows:</p> <p>ODA - Criminal Record Checks Rules - 173-9-01 through 173-9-10</p> <p>Even though the "Cost Analysis for Proposed 5 Year Required Background Check Rule" document was not referenced in the Common Sense Initiative (CSI) Business Impact Analysis (BIA) in this clearance review package of draft rules, Ohio Council continues to have concerns about the data that was gathered and used to determine the impact costs to certified HHAs.</p> <p>The Bureau of Labor Statistics data used as the basis of the cost analysis does not distinguish between agencies who take public dollars versus those who are privately paid. Those who take private pay should not have been included in the data to determine the costs impact, since they are not required to follow criminal records check rules.</p> <p>This means potentially that there are 38,503 (41% of the 93,910) employees of agencies that are not required to follow the criminal records check rules. These employees are providing in-home services to our most vulnerable and needy consumers that are unaware that these employees of agencies are not required to have background checks! Ohio Council determined the 38,503 by totaling the number of HHAs receiving public funds (770) and subtracting that number from the Ohio Department of Health (ODH) number of 1,300 HHAs.</p> <p>If Ohio would license these private pay (not reimbursed by public funds) agencies all of our Ohioans would be protected by the criminal records check rules.</p> <p>Please contact me with any questions.</p> <p>Beth Foster, Regulatory Specialist Ohio Council for Home Care & Hospice</p>	<p>In the business impact analysis, ODA did not include the estimates prepared by the Ohio Council for Home Care and Hospice, Interim, and Black Stone at an August 22, 2012 stakeholder meeting. Those figures were for more for <i>Medicare-certified home health care</i>. They factored in costs of RNs and therapists. ODA pays for the similar <i>personal care service</i>, which primarily involves a personal care aide going to the home. The pay of RNs and therapists would be higher than that of a PCA. ODA was able to complete the business impact analysis without those figures.</p> <p>The heart of your comment seems to regard unregulated home health agencies, which is a matter out ODA's control.</p> <p>Only the legislature could authorize (1) a state agency to require businesses who don't conduct business with the state to undergo criminal records checks according to that state agency's rules and (2) the creation of a licensure board to license providers. Neither ODA nor any other state agency can adopt a rule to achieve such a purpose without legislative authority.</p>

RULE 173-9-01

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12	<p>(B)(1)(a) Why is only the "head" of the regional LTC program and not all paid staff identified here? Same question for section (B)(7)(a). Perhaps not as important, but since the individual who serves as lead for the regional program has a title of Program Director, maybe that could be used instead of "head".</p> <p>Joyce Boling, RN, BS, Chief of Quality Management Ohio District 5 Area Agency on Aging, Inc.</p>	<p>The definition that ODA inserted into the rule matches the definition in section 173.27 of the Revised Code. We cannot deviate from the definition unless new legislation changes the definition.</p>
13	<p>It seems the rule could be simplified by eliminating the all the definitions for "applicant" and "employee" as they are almost identical. Could you have one definition of what an employee is and then one statement or two about an applicant. (e.g., add an "applicant" is an employee who is <u>under final consideration for employment as described in the "employee definition"</u>)</p> <p>Colette Cordova, Associate Vice President, Planning and Program Development Area Office on Aging of Northwestern Ohio, Inc.</p>	<p>The goal in the current draft was to include the fullness of the definitions in sections 173.27 and 173.394 of the Revised Code. It is not be wise to summarize in rule critical definitions found in the Revised Code.</p>
14	<p>(B)(3) and 173-9-02 (A)(2)(e,f,g): Chief administrator and responsible entity for consumer directed or self-directed care - the rules define this person as the consumer. Current ODA practice is that the consumer-directed or self-directed care applicant submit the results of his/her criminal background check to the ODA Provider Enrollment person when submitting the application for certification. Although the consumer may have provided instructions to the applicant/worker that a background check must be completed, the consumer is not the person currently making the decision as to the applicant's eligibility to work. The applicant sends the BCII report to ODA, who reviews it and makes a decision about the applicant's eligibility for hire. ODA's current practice also differs from the current and proposed Conditional Employment process described in the rules.</p> <p>Linda Gillespie, MA, LSW, community & Provider Relations Director Central Ohio Area Agency on Aging</p>	<p>There are two components of screening an applicant who wants to become a consumer-directed provider: (1) The consumer, as the would-be employer of the provider reviews his or her applicant's criminal record. (2) The would-be provider submits and application through the Medicaid Information Technology System (MITS). The Dept. of Job and Family Services (JFS) operates this website portal. JFS in turn sends the information to ODA to review because the applicant may only serve the consumer as a consumer-directed provider if ODA is able to certify the applicant.</p> <p>ODA's role and practice is not to determine if a consumer can hire an applicant, but to determine if ODA can certify an applicant. It is ODA's responsibility to ensure the applicant meets the conditions of participation, including the criminal records check requirements. ODA also ensures that the consumer has appropriately followed the steps required to do his or her part in reviewing the criminal records.</p>
15	<p>(B)(5) The definition of direct care is in conflict with rule 173-9-04 (B)(2)(b) if persons who have access to consumer's personal property or records are not going to be fingerprinted per rule 173-9-04 (B)(2)(b) why bother including this in the definition?</p> <p>Pamela Wilson, Senior Vice-Pres., Long-Term Care Area Office on Aging of Northwestern Ohio, Inc.</p>	<p>There is no conflict. An exception in proposed new rule 173-9-04 of the Administrative Code on requiring criminal records checks for certain employees after they are hired does not affect the definition of "direct care." For example, a person who only delivers meals still provides direct care whether or not he or she is required to undergo criminal records checks after the provider hires him or her.</p>

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16	<p>(B)(5) It seems the rule could be simplified by combining "ombudsman" and "direct care". I understand they took it from the old rule, but ombudsmen are part of the LTC program, so why not just put them in the "direct care" and add back part of the old rule 179-9-01 B. "Definitions (5) Direct care means any in-person contact with one or more consumers who receive a community-based long-term care service or any access to a consumer's personal property or personal records..... " Add the following "<u>Community based</u>" long term care includes the state long-term care and regional ombudsman."</p> <p>There are other areas in the rule where "ombudsman" and "direct care" worker information are nearly identical and should be combined. Shouldn't their standards be the same anyway? If you are in contact with a senior, you should be checked...</p> <p>Colette Cordova, Associate Vice President, Planning and Program Development Area Office on Aging of Northwestern Ohio, Inc.</p>	<p>Section 173.27 of the Revised Code is the basis for requiring criminal records checks on ombudsman staff. The statute calls the services of an ombudsman "ombudsman services," and not "direct care." Therefore, ODA chose to use terminology in the rules that directly reflected statute.</p>
17	<p>(B)(11) Does this rule apply to Area Agencies on Aging(AAA)? AAAs employ RNs and LSWs conducting waiver assessments and care management. These positions do not seem to meet the "Direct Care" definition. These rules do not appear to cover criminal background checks for these individuals. Shouldn't these employees also have a criminal background check or are AAAs intended to be excluded?</p> <p>Pamela Wilson, Senior Vice-Pres., Long-Term Care Area Office on Aging of Northwestern Ohio, Inc.</p>	<p>If an AAA or a PAA offers case management as a service, the AAA or PAA would become a provider whose employees furnish direct care.</p>

RULE 173-9-02

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18	<p>This could have a significant impact on consumer choice, particularly self-directed care. It is desirable for consumers to have the option to select their own direct care worker when appropriate (often a friend, family member or someone they have known for a long time). These consumers should not be required to keep this standard, and should be able to determine if they require their direct care worker to meet these standards. The current rule requires the consumer to have the applicant certified, but this may disqualify certain qualified caregivers such as a spouse, child, etc.</p> <p>Chris Hendriksen, President VRI</p>	<p>The law does limit a consumer's choice of providers to those providers who are not disqualified by their criminal records. For a program like the Choices Program in which a consumer directs his or her provider, the consumer may want to hire his or her child as the caregiver, but will be unable to do so because of the son's or daughter's criminal record.</p> <p>This is not a change that H.B.487 (129th G.A.) or ODA's proposed new rules are initiating. Section 173.394 of the Revised Code required this before H.B.487 amended it.</p>
19	<p>Sycamore Senior Center has 116 volunteers who consistently deliver Home Delivered Meals for our Passport and ESP clients. In addition, there are about 30-60 volunteers who deliver Home Delivered Meals on an as needed basis. Some of these volunteers work for companies like General Electric or Cincinnati Eye Institute on rotated delivery schedules.</p> <p>ORC 173.394 + ODA's new rules say that the state does not require providers to check the criminal records of volunteers, does that also prevent the area agency on aging from requiring the provider to check the criminal records of volunteers? As of now, our AAA does require background checks for volunteers in addition to paid staff. To my knowledge, they are the only AAA in the state making this requirement of their providers.</p> <p>We encourage the state to prohibit AAAs from making these requirements. Sycamore has no history of our volunteers abusing or exploiting our seniors. In fact, our 116 volunteers are dedicated to the well-being of our seniors, which is why it is possible for Sycamore to provide high-quality services to 312 senior Home Delivered Meals clients. We estimate that allowing an AAA to require criminal records checks on our volunteers would continue to be costly for providers. This money could be better spent supporting all center activities and services.</p> <p>Thanks you,</p> <p>Joshua Howard, Center Director Sycamore Senior Center</p>	<p>For programs that use ODA-certified providers, the PASSPORT Administrative Agency is ODA's designee and is not permitted to make a requirement that deviates from state law. Thus, for programs such as the PASSPORT Program, Assisted Living Program, and Choices Program, the PAA may not require volunteers to undergo criminal records checks.</p> <p>For a program that uses non-certified providers, the area agency on aging is allowed to enter into contracts with providers that contain requirements in addition to the mandatory requirements in rule 173-3-06 of the Administrative Code. However, if the area agency on aging, through a contract, requires a criminal records check, it would not be one through section 173.394 of the Revised Code or Chapter 173-9 of the Administrative Code, because that section and rule explicitly exempt volunteers. Therefore, the regulatory immunity that section 173.394 of the Revised Code offers would not be available to the provider for criminal records checks the provider conducted under the terms of the contract that were not required by section 173.394 of the Revised Code or Chapter 173-9 of the Administrative Code.</p> <p>Additionally, ODA has added a sub-paragraph to paragraph (B) of the rule [on inapplicability] to explicitly state in the rule that volunteers are exempt from Chapter 173-9 of the Administrative Code.</p>

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20	<p>I believe that it is imperative that if AAA's have the ability to change and modify this rule (i.e. require volunteers to be background checked) then they (AAAs) should either pay or the costs involved or be required to MAINTAIN CONSISTENCY AND FOLLOW THE RULES throughout the State</p> <p>Shon Gress, Executive Director Guernsey County Senior Citizens Center, Inc.</p>	<p>AAAs to not have authority to change or modify ODA's rules. The Ohio General Assembly has given only ODA the authority to amend ODA's rules.</p> <p>Please see ODA's response to comment #21.</p>
21	<p>I will preface this with – I may be misreading the rule. I'm confused with the "applicability" rules. If a Medicare certified provider has personal care aides that are "cross trained" to provide Medicare services, state plan, and Passport services – would this rule apply or not apply? I am leaning towards it applying. Am I correct?</p> <p>Teresa Heitbrink-Ireland, Provider Relations Coordinator Area Agency on Aging, 3</p>	<p>The intent of homogenizing sections 173.27, 173.394, 3701.881, 5111.033, 5111.034, and 5123.081 of the Revised Code was to allow <i>one</i> criminal records check on an employee to simultaneously satisfy the criteria for multiple criminal records check requirements.</p>
22	<p>In general, we believe the rules are necessary and well written with one exception-only "paid positions" are subject to BCII checks. There are so many volunteers out there that are in direct contact with consumers that one would think a volunteer with minimum employee information on file has more potential to have a criminal background that is unknown to the provider. Specific to meal delivery, we have several consumers who receive two meals per day one from Simply EZ (delivered once a week) and a second meal delivered by another provider. If both providers are delivering meals and something in the home was stolen who is going to be blamed?</p> <p>Simply EZ obtains BCII checks on every new driver and we do not allow the driver to be on the road until the report is returned.</p> <p>Kathleen Wilkosz, Franchise Director Simply-EZ Home-Delivered Meals</p>	<p>ODA applauds Simply-EZ for voluntarily implementing practices to ensure that consumers are safely served by a vetted workforce.</p> <p>ODA is presently unable to require volunteers to undergo criminal records checks because sections 173.27 and 173.394 of the Revised Code explicitly exempt volunteers. If future legislation removes this exemption, ODA may volunteers to undergo criminal records checks.</p>
23	<p>(A)(2)(j) I understand that Area Agencies on Aging will not be required to complete BC's on staff that have direct one on one contact will consumers could you please explain the rationale behind this position.</p> <p>Chuck Komp Senior Resource Connection</p>	<p>Please see ODA's response to comment #17.</p>
24	<p>(A)(2)(j) It is still my opinion that it is appropriate to follow the rule requirements for assessors who may be in a consumer's home for several hours, and who are obtaining the consumer's personal information.</p> <p>Joyce Boling, RN, BS, Chief of Quality Management Ohio District 5 Area Agency on Aging, Inc.</p>	<p>Please see ODA's response to comment #17.</p>

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25	<p>(A)(2)(j) Assessors from the area agency on aging see individuals in their homes and should be specified in this rule. There are also many other individuals at the AAA who have access to consumer records and personal information, i.e. screeners and provider monitoring staff. I believe all of these individuals should be included in the requirement for a criminal records check.</p> <p>Linda Gillespie, MA, LSW, Community & Provider Relations Director Central Ohio Area Agency on Aging</p>	Please see ODA's response to comment #17.

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26	<p>(B) The requirement for a responsible entities to distinguish between which employees are required to be criminal records checked per this rule or another agencies' rules would be difficult to document and monitor. We regularly have providers that will maintain a particular employee did not provide PASSPORT services, but cannot prove this. This entire section is extremely confusing. There must be clearer ways to stay who is subject to a background check and who is not. At times the rules appear to be requiring the check and subsequent rules seem to remove the requirement. It should be very clear and there should be consistency across the rules, but in this subject area there is not. For example, after reading the rules multiple times, it still seems unclear whether these rules apply to home delivered meal employees. If so, it is waiver meals only or other ODA meal programs as well?</p> <p>Pamela Wilson, Senior Vice-Pres., Long-Term Care Area Office on Aging of Northwestern Ohio, Inc.</p>	<p>One of the overall purposes of H.B.487 (129th G.A.) and the resulting rules is to create uniformity between the requirements in the rules of four state healthcare agencies to eliminate loopholes that allow people with disqualifying criminal records to work with vulnerable Ohioans.</p> <p>ODA's current rules apply to all of ODA's programs, not just the PASSPORT Program. The proposed new rules will also apply to all of ODA's programs. Therefore, distinguishing between PASSPORT and other ODA programs is unimportant when it comes to criminal records checks.</p> <p>Practically, unless a provider furnishes a service that makes it possible to have exclusive staff who only furnish direct care to a consumer who is <i>not</i> enrolled in one of ODA's programs or one of the programs regulated by the Depts. of Developmental Disabilities, Health, or JFS [Ohio Medicaid Agency], there should not be a need for a provider to distinguish which direct-care employees are required to undergo criminal records checks because <i>all</i> the direct-care employees would require checks.</p> <p>The exceptions listed in proposed new rule 173-9-04 of the Administrative Code are exceptions against the requirement to conduct criminal records checks on employees after they are hired. The employees are still required to undergo checks as applicants.</p> <p>To promote understanding, ODA has inserted a simple table just before paragraph (B) of proposed new rule 173-9-04 of the Administrative Code:</p> <p style="text-align: center;">ON WHOM IS A CRIMINAL RECORDS CHECK REQUIRED?</p> <table border="1" data-bbox="867 1247 1474 1360"> <thead> <tr> <th>OMBUDSMAN SERVICES</th> <th>APPLICANTS</th> <th>CURRENT EMPLOYEES</th> </tr> </thead> <tbody> <tr> <td>All ombudsman services</td> <td>Yes</td> <td>Yes</td> </tr> </tbody> </table> <table border="1" data-bbox="867 1388 1474 1806"> <thead> <tr> <th>DIRECT CARE</th> <th>APPLICANTS</th> <th>CURRENT EMPLOYEES</th> </tr> </thead> <tbody> <tr> <td>Only delivers home-delivered meals</td> <td>Yes</td> <td>No</td> </tr> <tr> <td>Only has access to consumers' personal records</td> <td>Yes</td> <td>No</td> </tr> <tr> <td>Only provide certain once-ever services</td> <td>Yes</td> <td>No</td> </tr> <tr> <td>All other direct care</td> <td>Yes</td> <td>Yes</td> </tr> </tbody> </table>	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 provide certain once-ever services	Yes	No	All other direct care	Yes	Yes
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RULE 173-9-03

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
27	<p>In rule 179-9-03, the requirement to check the free databases first should be optional. It should be up to the provider if they want to check those prior to spending money on a criminal records check. Since the state is not reimbursing providers for these background checks, it is up to the provider which is more efficient, and should not be mandated.</p> <p>Chris Hendriksen, President VRI</p>	<p>On December 21, 2011, Attorney General Mike DeWine wrote the following to ODA and other state agencies: “[I]t is paramount to the safety of ... vulnerable citizens that we prohibit certain types of criminals from entering into patients’ homes.” This letter initiated the legislation in H.B.487 (129th G.A.) and the subsequent rules.</p> <p>As the legislature passed H.B.487 and as the state proposed to adopt rules, we have been aware of the costs involved. The requirement to check free databases would not have any direct costs, but we are aware that it would increase administrative burdens on providers. The benefit justifies the burden.</p> <p>Uniform requirements to check the databases increases the likelihood that vulnerable citizens served by our programs will be safe. For example, in our current system, an aide who once provided an adult day service to a consumer with developmental disabilities could abuse the consumer, become listed on the DD Abuser Registry, then become ineligible to work in the DD field. However, the aide could retain his or her position providing adult day services if he or she only served frail, elderly consumers instead. This puts vulnerable citizens in the hands of known abusers. The proposed uniform requirements in four state agencies’ rules will close any such loopholes that allow those who have abused patients, are sexual predators, or who have defrauded government programs from continuing to serve vulnerable citizens in our programs.</p> <p>Also, a criminal records check may not demonstrate that a person is an abuser or has defrauded the government if the abuse or fraud was handled through administrative hearings. That is why such information is maintained in the databases.</p>
28	<p>Tracking and checking multiple web sites is an administrative nightmare. The state should have one portal to check before enforcing these rules.</p> <p>We have heard that there is a best practice National portal that could save money and be much better check than this rule mandates. Why not wait a year for this new, better system to be in place. Remember, this is for existing employees many of whom have over 25 years of service and do not fall under the existing rule. Waiting a year or so will make little or no difference.</p> <p>Mike Turner, Executive Director United Seniors of Athens County</p>	<p>Please see ODA’s response to comment #27.</p>

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
29	<p>MCA certainly understands the importance of identifying individuals with criminal backgrounds and protecting patients and beneficiaries that are compromised and under the care of a health provider. However, MCA does want to highlight the administrative burden of checking six different databases prior to doing a criminal background check. Agencies already check many additional databases for new employees: the CMS Common Working File (CWF), the board of nursing, therapy, social work and/or State Tested Nurse Aide Registry prior to doing the Criminal Record Check. Any assistance the state could provide in lessening this burden in the future would be greatly appreciated.</p> <p>Jeff Lycan, President Midwest Care Alliance</p>	<p>The purposes are different.</p> <p>A provider must check with boards <i>etc.</i>, to see if a person is qualified to furnish a service for which another rule requires a professional designation.</p> <p>A provider must check a person's status on the databases that ODA has listed in proposed new rule 173-9-03 of the Administrative Code to see if a person is disqualified from furnishing a service under the terms of this rule. (e.g., cited for abuse in a nursing home)</p> <p>Regarding the rationale for checking the databases in light of the regulatory burden doing so creates, please see ODA's response to comment #27.</p>
30	<p>Lastly, I believe it is very unfairly ambitious and unrealistic for the State to "require" employers to first check six free databases. First and foremost I believe the State administration is a little out of touch with reality regarding this rule. There are some areas of the State as well as some providers that do not have internet capabilities or have the appropriate staffing to conduct such research and investigations. This process will take time and money...two things ODA and the State have made apparent they are not willing to share with providers (historic record of making budget cuts....and lowering unit rates of reimbursement among providers). I believe if someone wants a job the burden of proof to show that they are employable <u>should fall on them...the applicant and potential employee...Not the employer, not the tax payer,...no one but the person who is looking to obtain work. In small rural areas I can see this being controversial, problematic, and yet another increased cost for rural employers with very limited staffs and limited budgets to absorb.</u></p> <p>Shon Gress, Executive Director Guernsey County Senior Citizens Center, Inc.</p>	<p>Please see ODA's response to comment #27.</p> <p>Regarding rates, please see ODA's response to comment #1.</p>
31	<p>Based on our volume, it would be more cost effective for us to pay BCII to run the report, versus the administrative time it would take to manually check the free databases first. That should be optional, instead of the free database review being mandatory. It should be the decision of the agency if they choose to pre-screen applicants through the free database reviews prior to BCII.</p> <p>Jenny Sand Home Care by Black Stone</p>	<p>Please see ODA's response to comment #27.</p>

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
32	<p>This is a lot more requirements and documentation for providers. Is it really necessary? Taking the time to review all of these data bases would soon become more expensive than just doing the background check to begin with. If the intent is for cost savings, that will not be achieved. This requirement will add on time and cost. This review should be optional, not mandatory. If the background check is conducted, it should not matter whether these other data base reviews occur and are documented. Also, in reviewing the websites, some are not user friendly. Agencies should not be held accountable for websites that appear too difficult to use.</p> <p>Pamela Wilson, Senior Vice-Pres., Long-Term Care Area Office on Aging of Northwestern Ohio, Inc.</p>	<p>Please see ODA's response to comment #27.</p>
33	<p>Free data base reviews: I have a couple of thoughts re: the free data base checks. Can a provider just skip this and do the BCI and/or FBI check. Or if the free data base review shows something and then the CBC check is not required and the person is not eligible for hire does that mean this free data base is that accurate? If this is good enough to say do not hire, then it should all be free to check for the criminal records check be it a free data base or with the BCI&I or FBI. I know this is not likely but can we create a data base of the names of the aides that have verified complaints but do not have a criminal record as they can go from one agency to another? I had an aide complaint today that was caught falsifying her time sheet and was terminated by the provider, I know she will show up working at another agency. I know the aide mentioned above that was accused of stealing medication but never confirmed should also be on this list. Since the criminal background information is needed to assure our consumer's safety why can't it be free?</p> <p>Kathleen M. Geise, RN, Quality Assurance Manager Catholic Social Services of the Miami Valley</p>	<p>If a free database lists someone in a manner in which rule 173-9-03 says the person is disqualified, the person is disqualified. Not all listings of abuse may lead to a criminal conviction. If it was only handled in an administrative hearing, the matter may be found in the DD Abuser Registry or the Nurse Aide Registry.</p> <p>Regarding skipping the free databases, please see ODA's response to comment #27.</p> <p>Regarding the responsibility to pay for criminal records checks: the decision is not ODA's. In statute, the Ohio General Assembly has clearly established that it is the employer who pays for the criminal records check. Statute also gives the employer permission to pass the cost on to the applicant or employee.</p>
34	<p>Please note this change to the EPLS system which will require some language change.</p> <p>(1) <i>EPLS: The United States general services administration's excluded parties list system, which is available at https://www.epls.gov/;</i></p> <p><u>GSA has discontinued the EPLS system as of 7/29/12. The General Services Administration (GSA) is moving the implementation date of the System for Award Management (SAM) from May 29, 2012 to the end of July 2012. The additional sixty days will allow federal agencies to continue preparing their staff, give agencies and commercial system providers even more time to test their data transfer connections, and will ensure SAM contains the critical, documented capabilities users need from the system. The new website is www.sam.gov.</u></p> <p>Jeff Lycan, President Midwest Care Alliance</p>	<p>Thank you for bringing this development to our attention. We will look for a way to remedy the matter.</p> <p>Update: On November 6, 2012, ODA revised filed the rules to change from EPLS to SAM.</p>

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
35	<p>First, in the rule 173-9-03 Free database reviews addresses all six data bases that must be check for all applicants but it does not address where this information is to be stored and for how long.</p> <p>Chrissy Goelz, Regional Administrator Home Care Network</p>	<p>Please refer to the rule on records (rule 173-9-08). Instead of making a special period of records retention for criminal records and database reviews, it requires provider to retain records required under Chapter 173-9 of the Administrative Code for the standard period of records retention required under rules 173-3-06 or 173-39-02 of the Administrative Code require.</p>
36	<p>We also feel that a check of the professional licensure needs to be added which would include any board actions taken upon that professional. With this should include a list of disqualifying actions.</p> <p>Chrissy Goelz, Regional Administrator Home Care Network</p>	<p>We agree that it is important to check the status of a person's professional licensure. However, Chapter 173-9 of the Revised Code only regards criminal records and database reviews. Other rules require checking for professional licensure.</p>
37	<p>We would be interested in receiving more information on the free databases to obtain criminal activity on a potential employee. We would make it mandatory to check every employee (including non-drivers) on an annual basis.</p> <p>Kathleen Wilkosz, Franchise Director Simply-EZ Home-Delivered Meals</p>	<p>The free databases won't provide criminal information the same way a criminal records check does. Here's what they do provide:</p> <ul style="list-style-type: none"> • The nurse aide registry can show if a person is listed as an abuser of patients. • The abuse registry shows who has abused patients. • The sex offender registry shows dangerous se offenders. • The federal databases show those who have cheated government programs. • The offender registry shows those who are currently incarcerated or under community control (i.e., "parole")
38	<p>Training programs, such as qualified STNA programs, should provide this free database reviews to responsible parties as well. Often times, our candidates take such a class and then are not qualified to work.</p> <p>Jenny Sand Home Care by Black Stone</p>	<p>We have passed this comment on to the Ohio Dept. of Health for their consideration.</p>

RULE 173-9-04

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES															
39	<p>(B)(1) The word "including" on the third line is in conflict with (B)(2)(b). Also a service intended to be a one-time, may become something more, such as a home repair service and a part is needed and return visit must occur. Also a chore or pest control provider may perform one service and be contacted in a few months to perform the same or another service. Is this still considered a one-time service exemption? This also seems in conflict with 173-9-02 (B).</p> <p>Pamela Wilson, Senior Vice-Pres., Long-Term Care Area Office on Aging of Northwestern Ohio, Inc.</p>	<p>Paragraph (B)(1) regards <i>applicants</i>, while paragraph (B)(2) regards <i>current employees</i>. The two are not the same.</p> <ul style="list-style-type: none"> Paragraph (B)(1) of the proposed new rule requires providers to conduct a criminal records check on every <i>applicant</i> under final consideration for a position to provide direct care. Paragraph (B)(2)(b) of the proposed new states that providers are not required to conduct a criminal records check on every type of <i>current employee</i> who provides direct care. (e.g., A person who only delivers home-delivered meals.) <p>To promote understanding, ODA has inserted a simple table just before paragraph (B) of the rule. On November 6, 2012, ODA revised the table to so that it also mentioned those who perform ombudsman services, not just those who furnish direct care.</p> <table border="1"> <thead> <tr> <th>DIRECT CARE</th> <th>APPLICANT</th> <th>CURRENT EMPLOYEE</th> </tr> </thead> <tbody> <tr> <td>Only delivers home-delivered meals</td> <td>Yes</td> <td>No</td> </tr> <tr> <td>Only has access to consumers' personal records</td> <td>Yes</td> <td>No</td> </tr> <tr> <td>Only provide certain once-ever services</td> <td>Yes</td> <td>No</td> </tr> <tr> <td>All other direct care</td> <td>Yes</td> <td>Yes</td> </tr> </tbody> </table>	DIRECT CARE	APPLICANT	CURRENT EMPLOYEE	Only delivers home-delivered meals	Yes	No	Only has access to consumers' personal records	Yes	No	Only provide certain once-ever services	Yes	No	All other direct care	Yes	Yes
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40	<p>(B)(2) Frequency for current employees; based on the draft rule regarding reprinting every 5 years, longstanding providers are being penalized for having consistent, longstanding employees. This could completely remove the hiring decision from the agency of long standing employees with exemplary work history.</p> <p>Jenny Sand Home Care by Black Stone</p>	<p>If a longstanding employee has a disqualifying offense in his or her criminal record, he or she is ineligible to provide direct care unless he or she has a certificate of qualification or employment or a pardon.</p> <p>A provider with a long-standing employee who may be disqualified by his or her criminal records and also unable because he or she is in an exclusionary period under rule 173-9-07 of the Administrative Code may seek to retain his or her employability by approaching a court to receive a certificate of qualification for employment under S.B.337 (129th G.A.).</p>															
41	<p>(B)(2) Do these follow up background checks have to be BCI or can we use the AISS computer based background we run yearly? We run a yearly review of all employees in February.</p> <p>Your clarification is greatly appreciated.</p>	<p>Sections 173.27 and 173.394 of the Revised Code require criminal records to be obtained through BCII. Each section defines "criminal records check" as the criminal records check from BCII, so the term does not apply to criminal records obtained by other means. Also, ODA defined "criminal records check" in rule 173-9-01 of</p>															

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
	<p>Darla Wright, Human Resources Comfort Keepers</p>	<p>the Administrative code. Any time the term appears in a rule of Chapter 173-9 of the Administrative Code, it refers to a BCII check under section 109.572 of the Revised Code.</p> <p>Obtaining criminal records from another source won't satisfy these rules unless the legislature amends the Ohio Revised Code to allow private criminal records check agencies' checks to count.</p>
42	<p>(B)(2)(a)(i) and (B)(2)(a)(ii) "No later than thirty days after the anniversary" would be preferable to read "within 30 days."</p> <p>Jean Thompson, Executive Director Ohio Assisted Living Association</p>	<p>In a telephone conversation, you clarified that you liked "within 30 days" because it seemed to allow a responsible entity to conduct a criminal records check on a current employee up to 30 days <i>before</i> and up to 30 days <i>after</i> the employee's anniversary date of hire.</p> <p>Fortunately, the current language already allows that option. Paragraph (B)(2)(a)(iii) of the same rule lets any provider request a criminal records check sooner than five years and exempts the provider from paragraphs (B)(2)(a)(i) and (B)(2)(a)(ii) if the provider does so. It provides the <i>before</i> option.</p> <p>To modify the language to allow a "before" in paragraphs (B)(2)(a)(i) and (B)(2)(a)(ii) of the rule with a compounding "before" in paragraph (B)(2)(a)(iii) of the rule would not add anything to the rule and could confuse readers.</p>
43	<p>(B)(2)(a)(i) and (B)(2)(a)(ii) As the Senior Network is seeing an increase in consumers who are also being served by the Ohio Department of Developmental Disabilities, the proposed language for the Criminal Records Check rules will need to be consistent.</p> <p>The proposed statute language of 5-years should be incorporated by DoDD as it will with other State agencies.</p> <p>Please let me know if you have any questions regarding my comment.</p> <p>Denise Niese, Executive Director Wood County Committee on Aging, Inc.</p> <p>[ODA asked, "How many DoDD consumers do you help? Is this through an adult day service?" The response follows.]</p> <p>At this point they are Title IIIC consumers (approx. 30 unduplicated). Within the next 6-9 months we will incorporate ADS and estimate 10-12 will receive those services.</p> <p>Denise Niese, Executive Director Wood County Committee on Aging, Inc.</p>	<p>In the development of this rule project, ODA conducted case studies of providers. The case studies revealed that it is common for one provider to provide services that are reimbursed by more than one state agency's programs. Your comments reinforce this finding. This is why we believe that homogenizing the proposed new statutes and rules would <i>decrease</i> the regulatory burden because the handling of one criminal record for an employee is the same under all four state agencies' rules.</p> <p>Division (B) of section 751.31 of the H.B.487 required ODA and the Depts. of Developmental Disabilities, Health, and Job and Family Services to "[m]ake the policies established by the rules as similar as possible." The frequency of the criminal records checks is an area where the state agencies did have the option to propose the same requirements in rules.</p> <p>ODA understands that the Dept. of Developmental Disabilities (DoDD) revised their proposed rule before filing it with the Joint Committee on Agency Rule Review. The rule that DoDD filed requires checks every <i>five</i> years.</p>
44	<p>(B)(2)(a)(i) and (B)(2)(a)(ii) I would like to second Denise's comment [above]. As a senior center that has a contract with our local Board of DD, I would like to see some consistency which would mean forcing DoDD to change</p>	<p>Please see ODA's response to comment #43.</p>

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
	<p>their rules for background checks to every five years. I understand that if RAPBack is successfully implemented, this could be a moot point. However, if it's not, then I believe consistency across the board with the state departments is necessary.</p> <p>Dave Bibler, Executive Director Licking County Aging Program, Inc. Also, President, Ohio Association of Senior Centers</p> <p>[ODA asked, When I asked you for a breakdown of LCAP in July, you said that LCAP served 50 DoDD consumers. Is that through an adult day service? If so, wouldn't that mean that the same staff members serve seniors and DoDD consumers? These details may help." The response follows.]</p> <p>Yes, we provide adult day services to DD clients and then we also have a contract with the Board of DD for two of our employees to provide activities for DD clients in residential facilities and nursing homes. We have a total of 5 employees that would be affected, possibly more if the back-ups who fill-in would also need to be background checked.</p> <p>Dave Bibler, Executive Director Licking County Aging Program, Inc. Also, President, Ohio Association of Senior Centers</p>	

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45	<p>(B)(2)(b)(i) Thank you for allowing me to address my concerns related to the increased screening of direct-care workers in home and community based programs. Wesley Community Services supports the concept of identifying employees who have violated the law and committed felonies or other crimes that place our clients at risk and supports the exception to criminal background checks for Meals-On-Wheels drivers.</p> <p>Wesley Community Services is a non-profit 501 C 3— Established in 1992 and provides home and community based services including Meals-On-Wheels, medical transportation, and homemaker services.</p> <p>Our clients are a mixture of seniors who receive services paid by local county tax dollars, federal funding and seniors who are in the Medicaid PASSPORT Waiver program. Wesley Community Services is not a Medicare certified Home Health agency nor do we provide any services reimbursed through Medicare.</p> <p>Wesley has a real concern about requiring criminal background checks for our Meals-On-Wheels drivers.</p> <p>I believe the exception to ongoing criminal background checks for Meals-On-Wheels drivers makes a lot of sense. Our average age for Meals-On-Wheels drivers is 66.5 for 32 of our 33 drivers. Our MOW drivers have an average length of employment of 6.4 years with 1/3 having 9+ years. Several of our drivers, who are all paid, are former public safety employees including local and county police officers. We already do pre-employment criminal background checks and drug screens for all employees hired and then quarterly random drug screens for a significant number of employees. We also check annually our driver's auto insurance and their driving records.</p> <p>Our Meals-On-Wheels drivers do not spend any significant amount of time in any of our meals clients' homes. Most often, a meal is received by a client at their front door. Therefore, the Meals-On-Wheels drivers do not have the opportunity or access to client property.</p> <p>Also, Wesley has never had any report of wrongdoing involving client possessions by a Meals-On-Wheels driver. In fact, I don't recall ever hearing of wrongdoing by any Meals-On-Wheels with any of our other Meals-On-Wheels programs in southwest Ohio.</p> <p>Based on the nature of their work, and access by Meals-On-Wheels to client property, and the fact that there has not been any incidences that I am aware of, Wesley supports providing an exception to Meals-On-Wheels drivers for ongoing criminal background checks.</p> <p>Stephen Smookler, Chief Operations Officer Wesley Community Services</p>	<p>Thank you for your input in this matter. Similar concerns that you raised in stakeholder meetings on this topic are what led to the exemption for those direct-care employees who only deliver meals from the requirement to undergo ongoing criminal records checks.</p> <p>With agreement from our partners with the Office of Health Transformation, we concluded that certain types of direct care pose a significantly reduced level of danger to the consumers than direct care that involves being alone <i>in the home</i> of the consumer for an <i>extended period of time on a regular basis</i>. As a result, ODA decided to not require a criminal records check every five years for an employee if the only type of direct care the employee provided was delivering a home-delivered meal to the consumer, which involves stopping at the homes of numerous consumers in a delivery route for a brief moment of time.</p> <p>We want to make it clear that this exemption only applies to checks on current employees (<i>i.e.</i>, after they are hired), not to applicants. As is the case under today's rules, an applicant for a position to provide direct care that only involves delivery meals must still undergo a criminal records check. ODA illustrates this in the table we inserted just before paragraph (B) of the rule:</p> <table border="1" data-bbox="878 974 1479 1394"> <thead> <tr> <th>DIRECT CARE</th> <th>APPLICANT</th> <th>CURRENT EMPLOYEE</th> </tr> </thead> <tbody> <tr> <td>Only delivers home-delivered meals</td> <td>Yes</td> <td>No</td> </tr> <tr> <td>Only has access to consumers' personal records</td> <td>Yes</td> <td>No</td> </tr> <tr> <td>Only provide certain once-ever services</td> <td>Yes</td> <td>No</td> </tr> <tr> <td>All other direct care</td> <td>Yes</td> <td>Yes</td> </tr> </tbody> </table>	DIRECT CARE	APPLICANT	CURRENT EMPLOYEE	Only delivers home-delivered meals	Yes	No	Only has access to consumers' personal records	Yes	No	Only provide certain once-ever services	Yes	No	All other direct care	Yes	Yes
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	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
46	<p>(B)(2)(b)(i) I just read a summary of the proposed changes to the Criminal Background Check rules and wanted to say Thank You for specifically addressing home-delivered meals as well as staff who only have access to client info but do not provide the service. You have no idea how much I appreciate that!</p> <p>Maureen Stevens, Executive Director Mobile Meals of Toledo</p>	<p>You're welcome.</p>
47	<p>(B)(2)(b)(i) Under the rule 173-9-4 (B) (b) (i) (ii) (iii) certain types of direct care workers are exempted from the need to have a criminal records check every five years if the direct care employee delivered home-delivered meal to the consumer, office staff or employees of central monitoring stations and persons who providing a once-ever service. I do not understand the rationale that a driver who during the time spent with the consumer is operating a motor vehicle and does not enter the consumer's home poses a significantly greater risk than a person who enters a consumer's home each day to deliver a meal. I do not understand how a person with access to all the personal information of a consumer, name, date of birth, Social Security Number, Medicare Claim Number, address and telephone number, next of kin and so forth, poses considerably less threat than a person in an adult day care facility. I do not understand why a person who enters the home every day that a consumer can readily identify poses a greater risk than a person entering the home of a consumer one time to make repairs or exterminate and the consumer may not be able to identify except by the company who sent the worker. Each of these scenarios illustrates my concern for this rule as written. The Business Impact Analysis states that certain types of direct care pose a significantly reduced level of danger because it does not involve being alone in the home on a regular basis such as home delivered meals; never alone in the home for those who access personal records and only once-ever for certain services. By the rationale given, it clearly shows that providers at these levels of care each have the same opportunity to do harm as other direct care providers yet are singled out for preferential treatment. If we are indeed looking to protect our vulnerable population, this exception needs to be reconsidered. The rule as written identifies the providers to be exempted. I encouraged the addition of other low-risk services including adult day services, congregate meals, nutrition counseling and education as well as medical and non-medical transportation. Adult day services, congregate meals, nutrition counseling and education are all performed in a group setting, typically in a facility under supervision. This leaves the direct-care provider considerably less opportunity to impact the at-risk population than any service that enters the home. The curb-to-curb transportation provider spends the majority of the time operating the motor vehicle, many times with other individuals in the vehicle, never entering the home, by curb-to-curb definition, not leaving the site of the vehicle. This provider like the other services does not enter the home and poses less risk. My personal</p>	<p>While ODA has proposed to exempt employees who only provide direct care that involves delivering meals from the requirement to undergo criminal records checks after they are hired, ODA is not proposing to do the other types of service personnel you have mentioned.</p> <p>After considering the idea, our Office of Health Transformation partners rested on the following rationale:</p> <ul style="list-style-type: none"> • Those who only transport consumers were one of the types of employees specifically singled out in the Ohio Attorney General's letter that initiated this project. • The patient protection language in the Affordable Care Act does not target those who only deliver meals as high risk or people upon whom to target for criminal records checks. However, the ACA does target employees in facilities like adult day centers. <p>Please also ODA's response to comment #45.</p>

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
	<p>preference would be to consider the aforementioned direct care positions in the reduced-risk level. Another option is the manner in which a criminal record check is required be reconsidered. One option is to make the criminal record check mandatory for all providers and then the five-year re-check be consider for those direct care providers involving being in the consumer's home alone with/without a consumer present on a regular basis. Another consideration would be to allow employers or responsible entities after the initial criminal record check to at five-year segments, check the six databases and if no disqualifying information is found consider that to be appropriate check for persons in "significantly reduced level of danger" direct care positions. Because this has a significant financial burden to the agencies, consideration should be given to procedures which could lighten this burden without leaving the population in jeopardy. With the great advances of modern technology, after a provider has performed the initial criminal record check including fingerprints, database searching should be a reasonable avenue for follow up. I encourage you to examine the direct-care provider list as noted in the impacted business community and determine high to low risk on a fair and equitable basis.</p> <p>Joyce Lewis, Community Services Director United Seniors of Athens County</p>	
48	<p>(B)(2)(b)(i) It is logical the homemaker and personal care and even home delivered meal providers would be the highest risk because their service is in the home. It is just a logical that transportation and adult day services providers are a much lower risk because they service is not in home and other caregivers monitor these clients.</p> <p>Mike Turner, Executive Director United Seniors of Athens County</p>	<p>Please see ODA's responses to comments #45 and #47.</p>
49	<p>(B)(2)(b)(i) Exempting home delivered meal employees seems a bit biased and unassuming, which I believe creates more inconsistency, more opportunity for liability, and irregularities among providers throughout the State. Some home delivered meal personnel are volunteers and some are paid associates. Each provider is different and one could argue that home delivered meal drivers are in the homes on a more repeated basis and their opportunity to exploit or mistreat a senior is no less diminished or removed than the opportunity for a homemaker, home care or personal care aid, or transportation provider to create a criminal act. I thoroughly believe if the criminal back ground rules are to be enforced consistently and fairly...they should apply to everyone without exception or exemption.</p> <p>Shon Gress, Executive Director Guernsey County Senior Citizens Center, Inc.</p>	<p>Please see ODA's response to comment #45.</p> <p>Section 173.394 of the Revised Code already exempts <i>volunteers</i> who deliver meals—or any volunteers, for that matter—from the requirement to undergo criminal records checks.</p>

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
50	<p>(B)(2)(b)(i) I don't agree with giving the HDM drivers and anyone that has direct access into the consumer's home and those having access to the consumer's personal information to be exempt from having to repeat the check every five years. They still have direct contact with the consumer. If you make these exempt then why not also add the ADS providers as they are not providing the service in the consumer's home. As stated in Mike DeWine's letter dated 12/21/11 that the rules are paramount to the safety of these vulnerable citizens that we prohibit certain types of criminals from entering into the patients' homes. The home delivered meal person enters the home but the ADS staff, except for the driver, does not enter the homes. It is suggested to put more thought into who is required and who is not required to have the CBC done every five years.</p> <p>Kathleen M. Geise, RN, Quality Assurance Manager Catholic Social Services of the Miami Valley</p>	Please see ODA's response to comments #45 and #47.
51	<p>(B)(2)(b)(i) Home deliver meal driver's should be fingerprinted. There are hot meal providers' that deliver every weekday and other driver's that deliver weekly or biweekly. These drivers have regular direct and ongoing access to consumers.</p> <p>Pamela Wilson, Senior Vice-Pres., Long-Term Care Area Office on Aging of Northwestern Ohio, Inc.</p>	Please see ODA's response to comment #45.
52	<p>(B)(2)(b)(iii) I am having difficulty understanding the reasoning here since almost without exception a direct care employee of listed services will either return to a consumer or another. I see more issues with at a later time needing to complete the check; I think checks will be missed.</p> <p>Joyce Boling, RN, BS, Chief of Quality Management Ohio District 5 Area Agency on Aging, Inc.</p>	ODA will take this comment into consideration as we continue to develop these rules.
53	<p>(B)(2)(b)(iii) This section also confused me (see below). Just to clarify. If the provider is utilized by more than one consumer (at any time or during a period of time?) – they would need to have an ongoing criminal records check. Correct? A side thought --- many AAA's share chore and minor home modification providers. This will be a challenge to assure compliance.</p> <p>Teresa Heitbrink-Ireland, Provider Relations Coordinator Area Agency on Aging, 3</p>	Please see ODA's response to comment #52
54	<p>(B)(2)(b)(iii) Chore, and minor home modification providers have had employees with serious disqualifying offenses. These individuals should not be in the homes of vulnerable consumers. If this is viewed differently, there should at a minimum be a requirement for an on sight supervisor to be present anytime these individuals are at a consumer's home.</p> <p>Pamela Wilson, Senior Vice-Pres., Long-Term Care Area Office on Aging of Northwestern Ohio, Inc.</p>	Please see ODA's response to comment #52.

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
55	<p>(B)(2)(b)(iii) We believe that chore, minor home modification home repair, pest control, etc. providers should be subject to the 5-year re-checks. These providers often make more than one trip to a consumer's home and rarely provide service to just one ODA consumer.</p> <p>Linda Gillespie, MA, LSW, Community & Provider Relations Director Central Ohio Area Agency on Aging</p>	<p>Please see ODA's response to comment #52.</p>
56	<p>(B)(3) What does "revalidation" mean here? Is this the "reverification" BCII reports that providers attempt to run from time to time through BCII? Isn't this in conflict with rule 173-9-04 (C)(2)(a) and 173-9-05 (A)(4)? It is our understanding that reverification reports do not require fingerprints.</p> <p>Pamela Wilson, Senior Vice-Pres., Long-Term Care Area Office on Aging of Northwestern Ohio, Inc.</p>	<p>It appears that Bureau of Criminal Investigation's (BCII's) term is "reverification." ODA will revise the rule to use that word instead.</p> <p>BCII informed ODA that it "does have a re-verification process for health care workers where if a background check has been submitted to our office for working with children or the elderly, for up to one year from the date of submission an individual can send in requests for the background check to be updated. Each request costs \$8 and does not require a new set of fingerprints. The background check still has an expiration date of one year from the original set of fingerprints being submitted. This process is available for the state background checks only. The FBI does not have a system to update background checks. Please let me know if you have any further questions." BCII also said, "Most of our webchecks which are a No Record, will return results within 24 to 48 hours."</p> <p>Update: On November 6, 2012, ODA revise-filed the proposed new rule to use "reverification" as the term of art to describe the report issued under division (D) of section 109.572. (Cf., Corresponding change in proposed new rule 173-9-08 of the Administrative Code.)</p>
57	<p>(C)(3) Is this rule stating that the responsible entity can employ the person conditionally before conducting the free database review. This is confusing. If the applicant must be fingerprinted prior to the commencement of conditional employment (173-9-04 (B)(1) and 173-9-05 (A)(4)), and the free database searches must be done before the BCII report is conducted how can the responsible entity hire a person conditionally then conduct the free database searches?</p> <p>Pamela Wilson, Senior Vice-Pres., Long-Term Care Area Office on Aging of Northwestern Ohio, Inc.</p>	<p>This paragraph does <i>not</i> refer to conditional employment. "Condition of continued employment" does not refer to conditional employment. Please see proposed new rule 173-9-05 of the Administrative Code for the rule on conditional employment.</p>
58	<p>(D) Our PAA is on the state line of Indiana and we have provider staff that would require the FBI check since they do not live in Ohio which will be even a greater cost to stay in compliance with the rule of completing the check every five years.</p> <p>Kathleen M. Geise, RN, Quality Assurance Manager</p>	<p>This should be common in Ohio. Most PASSPORT administrative agencies' planning and service areas border the state line, especially in the heavily-populated Cincinnati area.</p>

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
	Catholic Social Services of the Miami Valley	
59	<p>(D) The second phrase in the first sentence is very confusing as currently worded. It seems that the worker has the opportunity to provide evidence to the employer that an FBI check has been requested sometime during the past 5 years. We have never allowed employers to accept previously completed background check reports from applicants and prefer that the employer request their own FBI report if they don't have evidence that the worker has lived in Ohio for the past 5 years.</p> <p>Linda Gillespie, MA, LSW, Community & Provider Relations Director Central Ohio Area Agency on Aging</p>	<p>ODA drafted the language in paragraph (D) of rule 173-9-04 of the Administrative Code to closely follow the pattern in division (F)(1) of section 173.394 of the Revised Code.</p> <p>BCII has informed ODA that, although BCII issues reverified reports upon request,...</p> <p>the FBI does not have a process for reverification, so [BCII] can only release a FBI result to the address that was submitted with the fingerprints.</p> <p>Some employers give the applicant a copy of their background check result. It isn't a requirement, but it is allowed. If that is the case for the applicant, then they could show their prior FBI background check result to the new employer. FBI background check results are not permitted to be shared between employers (3rd party dissemination), so only the applicant would be able to give the result to a new employer.</p> <p>If an applicant does not have their own copy of the FBI background check result, and a new employer requires a FBI background check result, then a new FBI background check would have to be submitted by the applicant.</p>
60	<p>(F) Charging applicant fees every five years is not address in rule 173-9-04 section F(2)</p> <p>Jenny Sand Home Care by Black Stone</p>	<p>Paragraph (F)(1) states that the responsible entity is required to pay BCII any fees required under section 109.572 of the Revised Code. If rule 173-39-04 of the Administrative Code requires a check every five years, the fee is the fee that BCII establishes.</p>
61	<p>(G) Employment service providers should be held to the same standards as all direct care providers. It should be the responsibility of the agency to work out an agreement that all persons have criminal background checks prior to providing direct care services. Exemption should not be allowed for employment service providers. Agency providers should only be allowed to use persons from service providers that have passed criminal back ground checks in accordance to rule.</p> <p>Jenny Sand Home Care by Black Stone</p>	<p>If the employment service (<i>i.e.</i>, staffing agency) is not currently an ODA-certified provider or has not entered into a provider agreement with an area agency on aging, then section 173.394 of the Revised Code does not presently give ODA the authority to adopt rules to require the employment service to conduct criminal records checks under the terms of section 173.394 of the Revised Code</p> <p>However, section 173.394 of the Revised Code and Chapter 173-9 of the Administrative Code hold the provider of direct care responsible for conducting the criminal records checks of personnel that they receive from the employment service under section 173.394 of the Revised Code, unless the employment service voluntarily conducts the background check for the provider.</p>
62	<p>(G) In addition to the employment service exemption, can an education institution also be included. We have education programs for the home health aides and STNA's that complete the CBC as part of their application and then when hired by often a partnering agency they have to have the CBC check completed again, which is an added cost to the provider or the aide.</p>	<p>It seems that you are speaking about something akin to internships. If the intern provides direct care as a volunteer (no payment for work performed), then the provider is not responsible for conducting a criminal records check under section 173.394 of the Revised Code because section 173.394 of the Revised Code explicitly exempts volunteers from the requirements.</p>

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
	<p>Kathleen M. Geise, RN, Quality Assurance Manager Catholic Social Services of the Miami Valley</p>	<p>If the provider pays the intern to provide direct care, the provider is responsible for conducting a criminal records check on the intern according to section 173.394 of the Revised Code and Chapter 173-9 of the Administrative Code.</p> <p>If the intern is paid, but by the educational institution who is operating as an employment service (<i>i.e.</i>, staffing agency), then the provider—not the employment service—is responsible for conducting the criminal records check according to section 173.394 of the Revised Code and Chapter 173-9 of the Administrative Code, unless the educational institution voluntarily conducts the background check for the provider.</p>

RULE 173-9-05

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
63	<p>The proposal still allows companies to “conditionally hire” persons up to 60 days without any results from BCI and then terminate them when negative results are received. Conditional employment can create a tremendous amount of risk for patients and creates an unemployment issue for the employer (i.e. 6 weeks of work eligible for unemployment).</p> <p>Jenny Sand Home Care by Black Stone</p>	<p>ODA may not reduce nor eliminate the opportunity to employ an applicant conditionally for 60 days unless the legislature amends the statutes that create this conditional-employment opportunity.</p>
64	<p>With the electronic finger print check that are very quick; is it necessary to still require conditional employment of 60 days, can that be shortened? Most providers do not hire or put the person to work until it is returned. I did have an agency conditionally hire and then we had a report of a theft of medication that occurred within the first 10 days, and the agency still has not received the FBI check back and the worker is no longer working for the agency, she only worked 10 days for this agency.</p> <p>Kathleen M. Geise, RN, Quality Assurance Manager Catholic Social Services of the Miami Valley</p>	<p>You are wise to note that the speed of the WebCheck system that BCII uses minimizes the need for a period of conditional employment that could last up to 60 days. However, ODA is unable to consider shortening the period of conditional employment on its practical merits because sections 173.27 and 173.394 of the Revised Code clearly allow for conditional hiring.</p> <p>Please see ODA's response to comment #63.</p>
65	<p>Second, in reference to 173-9-05-B-1 Conditional employment we understand the concerns of conditional employment, but the realistic timeframe to retrieve a background check from BCII is 24 hours to 4 months. We feel that the 60 day time frame for conditional employment will need to be extended.</p> <p>Chrissy Goelz, Regional Administrator Home Care Network</p>	<p>BCII has informed ODA that “109.572 states that our turn-around time is to be 30 days. We have met this for years, however, at this point with our current circumstances (the passage of Senate Bill 337) some of our results are taking longer than our typical 30 days. The vast majority of our background checks are (No Records) and are still well under 30 days.”</p> <p>Please see ODA's response to comment #63.</p>
66	<p>(A)(4) Is fingerprinting the applicant prior to the commencement of employment necessary? I suggest allowing the responsible entity to fingerprint the conditionally hired employee and submit to BCII within the 5 days as stated under (A)(3). This would also allow the responsible entity to run the database searches after the conditional hire is made (if the database searches cannot be optional.)</p> <p>Pamela Wilson, Senior Vice-Pres., Long-Term Care Area Office on Aging of Northwestern Ohio, Inc.</p>	<p>This is a requirement in ODA's current criminal records check rule as well as the proposed new rule 173-9-05 of the Administrative Code. We'll consider your recommendation to revise this as we continue to develop these rules.</p>
67	<p>(A)(4) "completed fingerprint impression sheet" does not seem appropriate since in most cases a Webcheck is completed.</p> <p>Joyce Boling, RN, BS, Chief of Quality Management Ohio District 5 Area Agency on Aging, Inc.</p>	<p>ODA will consider your recommendation to revise this as we continue to develop these rules.</p>

RULE 173-9-06

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
68	<p>Do the additional offenses grouped under the new rules for AL Waiver providers mirror or are they included already in the offenses for RCF providers. If not, is it possible to have a list of the offenses that are <i>not</i> in the RCF/NH list of disqualifying offenses to share with members? Thanks.</p> <p>Jean Thompson, Executive Director Ohio Assisted Living Association</p>	<p>Please review the table below that is entitled, "Disqualifying Offenses: Comparison Between Pre-2013 and 2013 Lists."</p>

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
69	<p>There is a number of new disqualifying offenses that may disqualify a current employee from working. Will responsible entities be required to terminate these employees? Would termination of employees who meet employment laws at time of hire have any repercussions for such an action. If employee has been working for several years without incident, should this not be a consideration? Should there be a grandfathering period?</p> <p>Pamela Wilson, Senior Vice-Pres., Long-Term Care Area Office on Aging of Northwestern Ohio, Inc.</p>	<p>The law does not require a provider to fire any employee. An employer could continue to employ such a person, but could not allow the person to provide direct care under one of ODA's programs.</p> <p>Proposed new rule 173-9-07 of the Administrative Code sets forth the circumstances under which a current employee with a criminal conviction may retain the ability to provide ombudsman services or direct care.</p> <p>Regarding repercussions for the actions of termination, ODA cannot offer advice on the matter to providers. Providers should pursue their own legal counsel on this matter.</p> <p>Regarding grandfathering, During the week of November 5, 2012, the Depts. of Aging (ODA), Developmental Disabilities (DoDD), and Health (ODH) and the Office of Medical Assistance (OMA) have revise-filed their rules to allow for limited grandfathering.</p> <p>Sections 173.27, 173.394, 3701.881, 5111.032, 5111.033, 54111.034, and 5123.081 of the Revised Code, as amended by H.B.487, allow ODA, DoDD, ODH, and OMA to adopt rules set forth circumstances under which a responsible entity may choose to continue to employ an employee who has a disqualifying offense on his or her criminal record.</p> <p>Before revising the rules, each of the four state agencies had already set forth the following three circumstances in their proposed new rules:</p> <ol style="list-style-type: none"> 1. Disqualifying offense exclusionary periods of permanence, 10 years, 7 years, 5 years, and 0 years; 2. Certificates of qualification for employment and certificates of achievement and employability; and, 3. Pardons. <p>In the revisions that ODA, DoDD, ODH, and OMA made during the week of November 5, 2012, each agency is adding a fourth circumstance: limited grandfathering.</p> <p>Specifically, the revised rules say that, if the employee was convicted of, or pleaded guilty to, an offense(s) listed in the 5-year exclusionary period [Tier IV], the responsible entity may retain the employee, but only if: (1) The responsible entity hired the employee before January 1, 2013; (2) The employee's conviction or guilty plea occurred before January 2, 2013; and (3) the responsible entity has considered the nature and seriousness of the offense(s), and attests in writing before April 1, 2013, to the character and fitness of the employee based upon the employee's demonstrated work performance.</p>

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
		<p>Anticipating that responsible entities may request clarification on two points, ODA also wants to provide the following helpful information:</p> <ul style="list-style-type: none"> • A previous application of personal character standards under previously-adopted rules would not suffice as compliance with the limited grandfathering language in the proposed new rules. A responsible entity has a window from January 1, 2013 to April 1, 2013 to make a written attestation. • Limited grandfathering does not exclude a responsible entity from the responsibility to conduct ongoing criminal records checks every five years, to terminate an employee's employment if the employee's criminal record lists a disqualifying offense that does not fit the circumstances listed above, or to review the free databases before conducting each criminal records check.
70	<p>The new rule mandates that existing employees have a criminal background check within 30 days after their anniversary date in the year 2013. Our proposals for 2013 have already been submitted for 2013 so the year should be changed to 2014. Not allowing this relief from the year will cause providers to violate 173-3-06.6 (C)(2).</p> <p>If the above can not be done, then:</p> <p>Because this is a new rule and we have already submitted our proposals for 2013, instead of the mandate being within 30 days after the anniversary date, the rule should be within six months after the anniversary date. For most of us this would allow the cost of both administration and payment to be spread out over two budget years. The intent of the rule is just as satisfied by 6 months as 30 days for this class of employees. Not allowing this relief will cause providers to violate 173-3-06.6 (C)(2). Without this relief, some programs might be lost.</p> <p>How about wording so that the background check can be completed anytime during 2013. This way we could group employees for check when our budget could best stand the unfunded mandate.</p> <p>Mike Turner, Executive Director United Seniors of Athens County</p>	<p>In the stakeholder meetings that the Office of Health Transformation hosted, providers said it would be easier to phase in the requirements than to require an at-one date of implementation.</p> <p>Amended section 109.572 of the Revised Code is the statute that contains the list of 130 disqualifying offenses for <i>current</i> employees. It goes into effect on January 1, 2013 along with sections 173.27 and 173.394 of the Revised Code. The four state agencies are currently on target to adopt rules that will take effect on the same day. That way, the exclusionary periods may make it possible for some employees with disqualifying offenses to be able to maintain their jobs based on the criteria in rule 173-9-07 of the Administrative Code.</p> <p>For example, if a personal care aide's criminal record says that she was convicted of theft in 1990, but ODA does not adopt rule 173-9-07 of the Administrative Code on January 1, 2013, it will be illegal to allow the aide to provide direct care from January 1, 2013 until the day ODA adopts the rule. Fortunately, if ODA adopts rule 173-9-07 of the Administrative Code on the same day that the amendments take effect, it will be legal to allow the aide with a 1990 theft conviction to provide direct care on January 1, 2013.</p> <p>ODA does not have authority to alter the day that the legislation takes effect. That is a matter to address to the legislature.</p> <p>Update: Please also see ODA's response to comment #69.</p>

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
71	<p>Third, in proposed rule 173-9-06-B Disqualifying offense exclusionary periods; certificates, pardons: it states : No responsible entity shall employ or continue to employ a person In a position that involves ombudsman services or direct care if a person has been convicted of a violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that's is substantially equivalent to any of the offences or violation described in paragraph (A) of this rule. Our primary concern is related to the verbiage, "continue to employ". We believe that a grandfather date shall be added to rule so those that were employed under the subjective "personal character standards" will remain employed based on criteria set forth during that rule period. Senate Bill 337 did not go into effect until September 17th 2012 and we not yet have a clear understanding of the cost or timeframe required to obtain a Certificate of Qualification for Employment for these offenders.</p> <p>Chrissy Goelz, Regional Administrator Home Care Network</p>	<p>The Department of Rehabilitation and Corrections informed us that they are "currently working on administrative rules to effect the provision in SB337 authorizing Certificates of Qualifications for Employment. We do not expect to implement this provision until early in 2013."</p> <p>Please see ODA's response to comment #69 regarding grandfathering.</p>
72	<p>The rule needs to make it clear whether the rule applies to current employees or employees hired AFTER the date of the rule. In the past we received 2 answers from ODA and while monitoring this caused us problems as providers contacted ODA directly. Also, the PP [PASSPORT] and Title III sides of the house need to give the same answer. So does a provider need to terminate a current employee without a background check or put that staff person on leave until they get a background check? How do AAA's and their providers handle current staff without background checks?</p> <p>Colette Cordova, Associate Vice President, Planning and Program Development Area Office on Aging of Northwestern Ohio, Inc.</p>	<p>H.B.487 (129th G.A.) does not offer protections for current employees who have been convicted of disqualifying offenses (<i>i.e.</i>, "grandfathering") unless they are allowed to work under the exemptions, certificates, or pardons explained in rule 173-9-07 of the Administrative Code.</p> <p>Please see ODA's response to comment #69 for more information on grandfathering.</p> <p>We agree with you that it is important to note that section 173.394 of the Revised Code applies to all of ODA's direct-care programs: Alzheimer's Respite, Assisted Living, Choices, Older Americans Act, PACE, PASSPORT, Senior Community Services, <i>etc.</i></p>
73	<p>There are no provisions for person(s) with pending criminal actions. It is only for convictions. Our practice is to not employ person(s) with pending criminal actions that are directly related to SB 160.</p> <p>Jenny Sand Home Care by Black Stone</p>	<p>You are correct, the statute and rules only prohibit hiring subject to criminal <i>convictions</i>, not allegations.</p>
74	<p>I have had many providers that have received background check reports where there is no final disposition indicated. Therefore the employee was charged with theft, for example – but no further information of a conviction. Is there anywhere we can note that in the rules – that the provider along with the employee would be responsible for obtaining documentation of the final disposition for an arrest or charge that is noted on their report???</p> <p>Teresa Heitbrink-Ireland, Provider Relations Coordinator Area Agency on Aging. 3</p>	<p>ODA has not adopted language into the rules that require the employee to be responsible for obtaining documentation on final dispositions. A responsible entity is free to research this information itself or to only hire an applicant (or retain an employee) who will provide the documentation.</p> <p>Please see ODA's response to comment #73 regarding arrests.</p>

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
75	<p>In the cases where misdemeanors are considered, there are 5 degrees. Fifth degree being the lesser and first being the highest before felony convictions begin. While we agree that no crime is a "good crime", there are circumstances that should be considered for mitigation. We believe that fourth and fifth degree misdemeanors should be allowed to be considered as a lesser restrictive time frame than more serious crimes (1st-3rd degree misdemeanors and all felonies) unless they a) have been repetitive, or b) are part of multiple convictions (paired together in a crime).</p> <p>Chris Hendriksen, President VRI</p>	<p>The crimes listed in section 109.572 of the Revised Code and rule 173-9-06 of the Administrative Code do not differentiate between degrees of misdemeanor or felony. If section 109.572 of the Revised Code lists the crimes as a disqualifying offense, the crime is a disqualifying offense regardless of the degree of the offense.</p> <p>In ODA's proposed new rule 173-9-07 of the Administrative Code, the crimes are treated in a similar manner, with one exception: the offense of drug possession (§2925.11). If the offense is listed on BCII's criminal record report as a minor drug offense, the person is not barred from employment. If BCII's criminal records report does not make such a listing, the employer may request a final disposition from the county clerk of courts to see if an applicant in whom the employer wants to hire is, in fact, hireable. The employer should retain the information that it receives from the county clerk of courts sealed in the employee's personnel files.</p>

RULE 173-9-07

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
76	<p>LOVE the exclusionary periods.</p> <p>Teresa Heitbrink-Ireland, Provider Relations Coordinator Area Agency on Aging, 3</p>	<p>Thank you!</p>
77	<p>I have read the rule and revised changes and agree with the terminology changes. I like the tiered offences rules as they relate to time, however I believe we owe it to our seniors to protect them from crime and violence, therefore I like the tiered program for offences to promote individuals whom have made poor choices in their past, so keep certain offences prohibited from caring for our seniors.</p> <p>Thank you for allowing me to participate and respecting my input.</p> <p>Betty Phillips, Owner Home Instead Senior Care</p>	<p>Thank you!</p>
78	<p>As a long-time PASSPORT provider, I have great concerns about the proposed rules to change the requirements for criminal background checks. We focus almost entirely on the over 60 population, and agree that they are at a more elevated risk than the general population. However, I do not believe that the increased screening will have the intended benefits, and will only cost providers money. In reality, a person could commit a crime on day 2 of their employment and we may not find out until we recheck them, 4 years and 363 days later. Further, a person with a clean record can commit an offense as easily as someone who has a positive hit on their background check. Not only will it not have the intended protections, but it will also harm good standing aides who may have made a mistake years ago. Based upon the current proposed tier system, Black Stone has at least 3 current home health aides with a Tier I: Permanent Exclusions. We had written Personal Character Standards for them, based on the fact that their offenses were over 10 years ago (one was 25 years ago) and they have had no other negative contact with the law. These are all long-standing, good employees who have been valuable to our organization.</p> <p>The best use of resources would be to prevent those who have committed offenses from working again in the field. Too many times bad employees go from one employer to another. Our judicial system needs a streamlined way of prosecuting and recording these types of criminals as opposed to raising the cost of doing business with no tangible value.</p> <p>Jenny Sand Home Care by Black Stone</p>	<p>After a further inquiry, you shared anonymous scenarios with our office. We'll comment on those:</p> <p>In one scenario, the employee was convicted of theft in 1984. Because proposed new rule 173-9-07 of the Administrative Code lists theft in Tier IV, the conviction bans a person from providing direct care for a period of five years starting at the conclusion of their sentence. That means the responsible entity may continue to employ such a person with no need for a certificate or pardon.</p> <p>In another scenario, the employee was convicted of Medicaid fraud in 1990. Because proposed new rule 173-9-07 of the Administrative code lists Medicaid fraud in Tier I, the conviction permanently bars the responsible entity from employing the person in a position to provide direct care beginning on January 1, 2013. The only means by which such a person could work for the responsible entity is if (1) the person works in a position that does not involve providing direct care or (2) the governor pardons the employee. For more information on pardons, see this website: http://opd.ohio.gov/DP/DP_Clemency.htm However, if the employee appears on a federal Office of Inspector General or Excluded Parties List System (EPLS) website (now the System for Award Management (SAM) website), the responsible entity will not be able to hire the person even if their criminal record is pardoned. If the person was found guilty of Medicaid fraud, it is possible that he or she already appears on the OIG or EPLS websites as ineligible to work.</p>

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
79	<p>The tier system removes the employer from the hiring decision. Aside from the EEOC requirements, the agency should still have some decision in determining the likelihood an applicant may commit another disqualifying offense and for non-repeat offenders based on age at time of offense, time since offense occurred, age of victim, was victim physical disabled, older adult or child. In other words, we need to maintain the ability to apply Personal Character Standards. In an industry where the consumer base may outgrow the staffing availability, hiring cannot be as black and white as a tiered system.</p> <p>Jenny Sand Home Care by Black Stone</p>	<p>The replacement of personal character standards is designed to remove subjectivity, and therefore the likelihood for abuse, from the regulations. The exclusionary periods set forth objective criteria that can be applied evenly across the state.</p>
80	<p>Prior to August 2011 in section 173-9-01 in the definitions there was language that allowed for a provider to utilize Personal Character Standards when hiring an individual. Below that was the beginning of that section.</p> <p>(E) Personal character standards: If an applicant was convicted of a disqualifying offense, the employer may use paragraphs (E)(1) and (E)(2) of this rule to determine if it is permissible to hire the applicant:</p> <p>MCA has members who have expressed concerns that they may have some long-term employees, that when a new Criminal Records Check (CRC) is completed an offense may come up that could bar the agency from continuing their employment. In MCA's evaluation, the way this rule is written, providers will be forced to fire employees that have never had another offense. MCA believes the statute should have some leeway such as a personal character standard which would allow some discretion. Personal character standard language was found in ODH rule 3701-13-06 last updated 9/5/97. ODA removed the Personal Character Standards language in August 2011, 173-9-01. We request that the Personal Character Standard or similar language be added to apply to any personnel hired prior to September 1997.</p> <p>Jeff Lycan, President Midwest Care Alliance</p>	<p>Please see ODA's response to comment #79.</p>
81	<p>Why are the personal character standards no longer part of the rule? The bars are understandable but how does that pertain to providers that currently have hired an employee and have used the personal character standards to employ them and then when they do the five year re- check do they no longer qualify for employment? It is hard to determine if this will limit and add to the shortage of home health aides and home health agencies.</p> <p>Kathleen M. Geise, RN, Quality Assurance Manager Catholic Social Services of the Miami Valley</p>	<p>Please see ODA's response to comment #79.</p>

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
82	<p>The requirements for getting addressing a disqualifying offense are significantly different. There are current employees that will not pass these new requirements. Will responsible entities be required to terminate these employees? Are there employment rights that may be violated here?</p> <p>Pamela Wilson, Senior Vice-Pres., Long-Term Care Area Office on Aqing of Northwestern Ohio, Inc.</p>	<p>You are correct that the requirements are different. ODA and the Depts. of Developmental Disabilities, Health, and Job and Family Services [Ohio Medicaid Agency] have replaced the subjective personal character standards with a new, objective set of criteria.</p> <p>Please see ODA's response to comment #69 regarding grandfathering.</p>
83	<p>We suggest reducing the the timeframe for disqualification to 1 year or allowing for a probationary period of 1-2 years (where employee could work, but would be monitored or checked more frequently) for 4th & 5th degree misdemeanors. Currently, there are some convictions within the 10- and 7-year restriction tiers that can be levied at 4th or 5th degree (minor) misdemeanors. For example, 2925.03 (trafficking in drugs) is on the 10-year restriction list. The code states: "(h) Except as otherwise provided in this division, if the offense involves a gift of twenty grams or less of marihuana, trafficking in marijuana is a minor misdemeanor upon a first offense and a misdemeanor of the third degree upon a subsequent offense. If the offense involves a gift of twenty grams or less of marijuana and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marijuana is a misdemeanor of the third degree." The categorization of "trafficking in drugs" in the rule does not allow for the distinction between someone that makes a poor decision and gives marijuana to someone else in college (5th degree misdemeanor) from someone selling drugs at a middle school playground to children. In our opinion, those acts should not carry the same penalty of 10 year disbarment.</p> <p>As context, our current policy includes the following language -- "Although a disqualification is possible, in accordance with federal and state laws, a previous conviction does not automatically disqualify an applicant from consideration for employment with VRI. Depending on a variety of factors (for example, the nature of the position, the nature of the conviction, age of the candidate when the illegal activity occurred), the candidate may still be eligible for employment with VRI." We do not hire anyone with felony convictions, but we do consider lesser misdemeanors to have some context and to determine if the offense is a disqualifying event.</p> <p>Chris Hendriksen, President VRI</p>	<p>As stated in the business impact analysis, the state's delegation of a criminal offense to one tier over another was influenced by the longitudinal research of Alfred Blumstein and Kiminori Nakamura¹ as well as other studies.</p> <p>The Blumstein research demonstrated that a person who commits a crime is, after a number of years, only as likely as the general public to commit a crime (again). Therefore, after reaching a certain number of years, a person is—statistically speaking—of no greater danger to vulnerable citizens than is the general public.</p> <p>For example: The research showed that a person found guilty of robbery at the age of 18 was only as likely to commit a crime (again) as the general public after 7.7 years. The state is proposing to assign robbery (§2911.02) to Tier III, which excludes a person from providing direct care for a period of 7 years.</p> <p>S.B.337 (129th G.A.) has established that a person may approach a court of common pleas to ask for a certificate that would allow them to provide direct care even if the criminal offense on their record is in Tiers II through IV. For example, if a person's criminal records shows he or she has been convicted of theft (§2913.02), proposed new rule 173-9-07 of the Administrative Code states that the person would be excluded from providing direct care for five years. But, if the court agrees that a person no longer poses a danger to vulnerable citizens, the court may issue a certificate that, in effect, declares the person is redeemed before the five-year period and that a responsible entity may hire him or her in a position to provide direct care.</p>

¹ Alfred Blumstein and Kiminori Nakamura. "Redemption in The Presence of Widespread Criminal Background Checks." *Criminology*. Vol., 47. © 2009.

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
84	<p>Under this section, in each Tier description, there is language that states “A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described in paragraphs” MCA believes that this language is both over-reaching and impossible for individual providers to achieve without exhaustive means. How would a provider identify a municipality or another state’s information? Who decides if an offense is equivalent to Ohio’s? MCA believes this language should be removed from each tier, as the other language in the rule clearly identifies the intent and with the data available should adequately achieve the desired results.</p> <p>Jeff Lycan, President Midwest Care Alliance</p>	<p>Here is a scenario: A person applies for a position to provide direct care in Ohio, but has only moved to Ohio from Michigan four years earlier. As a result, the responsible entity must obtain a criminal records report from the FBI in addition to the BCII’s report.</p> <p>The Ohio Revised Code lists each disqualifying offense according to the section of Revised Code through with the Ohio General Assembly enacted a penalty for the offense. To be helpful in comparisons to other states’ or government entities’ lists of offenses, we have listed (in parentheses) the subject of the section of the Ohio Revised Code just after the section number. ODA did this in rules 173-9-06 and 173-9-07 of the Administrative Code</p> <p>If the person in our scenario was found guilty of aggravated robbery in Michigan, it would be a disqualifying offense in Ohio because the offense under section 2911.01 of the Revised Code is a disqualifying offense. §2911.01 is listed in rule 173-9-07 of the Administrative Code as a Tier II offense that excludes a person from direct-care employment (without a certificate or pardon) for 10 years.</p> <p>Therefore, if the person in our scenario applied for a position to provide direct care in Ohio more than 10 years after finishing a sentence in Michigan for aggravated robbery, the person is no longer excluded from the opportunity to be employed in the direct-care field serving consumers of an ODA-administered program.</p>
85	<p>EEOC requirements – Based on our initial review, the new tiered structure may put us in violation of the federal EEOC requirements.</p> <ul style="list-style-type: none"> • The EEOC Enforcement Guidance Guidelines on Considerations of Arrest and Convictions Records in Employment Decisions provides that use of criminal history in employment decisions, specifically hiring, has a disparate discriminatory impact on minority populations. • The Title VIII protected class (primarily race) has disproportionately high criminal convictions compared to non-protected classes. Based on the fact that we are in a population center with high minority population, and the majority of our current direct care workforce are minorities, we will likely face liability for Title VII (primarily race) discrimination if we adhere to the proposed rules. • The new rule allows hiring of an applicant based only on the age of the criminal record, eliminating the previous rule (OAC 173-9-01 (E)(2)), which provided employers a certain level of discretion. This discretion, or “personal character standards,” gave us a procedure to avoid liability for the criminal record 	<p>The replacement of personal character standards is designed to remove subjectivity, and therefore the likelihood for abuse, from the regulations. The exclusionary periods set forth objective criteria that can be applied evenly across the state.</p>

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
	<p>discriminatory impact..</p> <ul style="list-style-type: none"> In addition, EEOC guidelines provide that any criminal conviction used in employment decisions must be related to the actual job to be performed. While we take the safety of our clients very seriously, several of the offenses, such as inducing panic or contributing to the delinquency of a child, are difficult to connect to our industry. Further, the Employer will have the burden to prove that the use of the criminal record did NOT have a discriminatory impact. In discriminatory impact analysis, the Employer's intent does not matter – the analysis is simply whether or not use of the criminal conviction adversely affected more persons of Title VII protected classes (race, sex, ethnicity, etc) than non-protected classes. <p>Jenny Sand Home Care by Black Stone</p>	
86	<p>MCA wishes to take this opportunity to have the state agency explain how the exclusion timeframe of each offense ie, five/seven/ten years will tracked?</p> <p>Jeff Lycan, President Midwest Care Alliance</p>	<p>When ODA (or its designees) monitor responsible entities for compliance with the statute and rules, it will use the authority granted in sections 173.27 and 173.394 of the Revised Code to look into personnel files to review the criminal records reports to see if employees who provide ombudsman services or direct care have criminal convictions on their records, when those convictions occurred, if the personnel file contains any certificates (<i>cf.</i>, S.B.337), <i>etc.</i> Then ODA (or its designees) will evaluate how the responsible entity complied with the statute and rules, including the application of the tiers (<i>i.e.</i>, 5-, 7-, 10- year exclusionary periods).</p> <p>ODA does not track criminals or keep a database of criminals.</p>
87	<p>(B) Clarification is needed for obtaining and using of "Certificates of qualifications for employment" and "Certificates of achievement and employability." Is the responsible entity responsible for obtaining the certificates? Is there a time limit on their validity? How would we handle a record that was expunged or sealed, which is common in this field?</p> <p>Jenny Sand Home Care by Black Stone</p>	<p>The Department of Rehabilitation and Corrections informed us that they are "currently working on administrative rules to effect the provision in SB337 authorizing Certificates of Qualifications for Employment. We do not expect to implement this provision until early in 2013."</p> <p>The Ohio Dept. of Rehabilitation and Corrections has notified us that certificates of Achievement and Employability are already available. http://www.drc.ohio.gov/OCSS/AandEbrochure.pdf</p>
88	<p>(A)(4)(a)(xix) has a typo in the word "personating", specifically there is a space between "a" and "t".</p> <p>Joyce Boling, RN, BS, Chief of Quality Management Ohio District 5 Area Agency on Aging, Inc.</p>	<p>In the version of the proposed new rule that ODA files with JCARR, we will have corrected this error.</p>

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
89	<p>(A)(4)(a)(xi) and (li) appear to be the same except for the number. Is that correct?</p> <p>Joyce Boling, RN, BS, Chief of Quality Management Ohio District 5 Area Agency on Aging, Inc.</p>	<p>In the version of the proposed new rule that ODA files with JCARR, we will have corrected this error.</p>
90	<p>(A)(5) typo line one; "An" should be "A".</p> <p>Joyce Boling, RN, BS, Chief of Quality Management Ohio District 5 Area Agency on Aging, Inc.</p>	<p>In the version of the proposed new rule that ODA files with JCARR, we will have corrected this error.</p>

RULE 173-9-08

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
91	<p>(A)(2)(f)(i) What about non-waiver agencies?</p> <p>Pamela Wilson, Senior Vice-Pres., Long-Term Care Area Office on Aging of Northwestern Ohio, Inc.</p>	<p>The items listed under paragraph (A)(2) of the proposed new rule closely follow the items listed under division (I) of section 173.394 of the Revised Code. Every entity listed under paragraph (A)(2) of the rule may view the criminal records a “non-waiver agency” retains on file unless otherwise noted. Only one such entity is noted: Paragraph (A)(2)(f)(i) of the rule says that JFS may monitor the records of only waiver agencies.</p>
92	<p>(B)(1)(a) The amount of administrative work and paper required to print each free database review would be extensive. We suggest that you make this optional if a provider would prefer to use BCII.</p> <p>Jenny Sand Home Care by Black Stone</p>	<p>Please see ODA’s response to comment #27.</p>
93	<p>(B)(1)(c), (B)(1)(d), and (B)(1)(e) Should add “if applicable”</p> <p>Jenny Sand Home Care by Black Stone</p>	<p>We try to minimize the use of “as applicable” in rules because it leaves the determination of what applies up to the reader of the rule. Nevertheless, your comment helps us see a way to improve the rules. Instead of requiring the responsible entity to retain “any [document],” ODA will require the responsible entity to retain “a [document], if [government entity] issued [that document] to the employee.”</p>

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
94	<p>(B)(3) How long must the criminal record check reports be retained?</p> <p>Jean Thompson, Executive Director Ohio Assisted Living Association</p>	<p>The rule requires provider to retain records required under Chapter 173-9 of the Administrative Code for the standard period of records retention required under rules 173-3-06 or 173-39-02 of the Administrative Code require.</p> <p>Paragraph (A)(20) of rule 173-3-06 of the Administrative Code requires the following to be in every provider agreement:</p> <p>A clause requiring the provider to retain any record relating to costs, work performed, supporting documentation for payment of work performed, and all deliverables until the latter of:</p> <p>(a) Three years after the date the provider receives payment for the service;</p> <p>(b) The date on which ODA, the AAA, or a duly-authorized law enforcement official concludes monitoring the records and any findings are finally settled; or,</p> <p>(c) The date on which the auditor of the state of Ohio, the inspector general, or a duly authorized law enforcement official concludes an audit of the records and any findings are finally settled.</p> <p>Multiple paragraphs in rule 173-39-02 of the Administrative Code require every ODA-certified provider to agree to the following conditions:</p> <p>Records retention: The provider shall retain all records necessary, and in such form, so as to fully disclose the extent of the services the provider furnished, and significant business transactions, until the latter of:</p> <p>(i) Six years after the date the provider receives payment for the service;</p> <p>(ii) The date on which ODA, ODA's designee, ODJFS, the PAA, or a duly-authorized law enforcement official concludes a review of the records and any findings are finally settled; or,</p> <p>(iii) The date on which the auditor of the state of Ohio, the inspector general, or a duly-authorized law enforcement official concludes an audit of the records and any findings are finally settled.</p>
95	<p>(B)(3) The length of time records need to be kept is not identified in rule.</p> <p>Jenny Sand Home Care by Black Stone</p>	<p>Please see ODA's response to comment #94.</p>
96	<p>(B)(3) there is no rule under 173-9-02 (A)(5).</p> <p>Pamela Wilson, Senior Vice-Pres., Long-Term Care Area Office on Aging of Northwestern Ohio, Inc.</p>	<p>Please see rule 173-39-02 of the Administrative Code, not rule 173-9-02 of the Administrative Code.</p>

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
97	<p>(C) Presently the all providers must maintain a BCI log on all employees, In the past monitoring agencies did not have access to the actual BCI's completed on employees and relied upon the logs during their monitoring visits. At this time monitoring agencies have access to the employee BCI'S. Therefore the completion of the logs appears to be redundant and unnecessary. Eliminating the logs would save time for providers.</p> <p>Chuck Komp Senior Resource Connection</p>	<p>You are correct that the General Assembly has granted authority for ODA; the Depts. of Developmental Disabilities, Health, and Job and Family Services [Ohio Medicaid Agency]; and the Ohio Attorney General's Office the ability to monitor actual criminal records reports in personnel files. The concept of an applicant log was created before a time when the state could monitor files for the actual reports.</p> <p>After reviewing this comment, the four state agencies came to a compromise decision. The rules now require responsible entities that provide direct care to maintain a roster instead of an applicant log. Because the provider is required to keep a copy of the criminal records report sealed in the personnel files (or in a separate file), and because state agencies have access to those files to monitor for compliance, the four state agencies are proposing to no longer requiring providers to maintain applicant logs. The proposed new rosters would require the provider to retain much less information in a separate document than the logs.</p> <p>The response of the Common Sense Initiative Office to this was that it met a satisfactory reduction of reduction on the burden to providers.</p>
98	<p>(C) Applicant and employment log – The current log system is cumbersome and redundant for the responsible entity. The log as described in this rule goes a step further. The monitoring agencies generally have access to the BCII results. This is more administrative burden, costing time and money, for no effect.</p> <p>Jenny Sand Home Care by Black Stone</p>	<p>We agree with your comment. Please see ODA's response to comment #97.</p>
99	<p>(C) I would suggest to add to the log a column that would say if the five year residency was verified. I came across a situation yesterdy that would have been helpful to see this on the provider's log.</p> <p>Kathleen M. Geise, RN, Quality Assurance Manager Catholic Social Services of the Miami Valley</p>	<p>Please see ODA's response to comment #97.</p>
100	<p>(C) Applicant and employment log: Include date prints were taken so that compliance with 173-9-05 (A)(4) can be monitored. It seems that (3) and (7) would be the same date and therefore could be listed just once.</p> <p>Linda Gillespie, MA, LSW, Community & Provider Relations Director Central Ohio Area Agency on Aging</p>	<p>Please see ODA's response to comment #97.</p>
101	<p>(C) between (4) and (5) – Request to add "Date conditional employee was terminated based on disqualifying offense(s).</p> <p>Pamela Wilson, Senior Vice-Pres., Long-Term Care Area Office on Aging of Northwestern Ohio, Inc.</p>	<p>Please see ODA's response to comment #97.</p>

RULE 173-9-09

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
102	<p>Immunity from negligent hiring- Training needed on this as I am questioning if there is immunity then are we assuring consumer safety?</p> <p>Kathleen M. Geise, RN, Quality Assurance Manager Catholic Social Services of the Miami Valley</p>	<p>This is a legitimate concern. However, the law does grant immunity to those who properly complete the criminal records check process.</p>

RULE 173-9-10

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
103	<p>The Disciplinary Action section seems "light" to me – especially since ODA takes a very firm stance with criminal background checks.</p> <p>Teresa Heitbrink-Ireland, Provider Relations Coordinator Area Agency on Aging, 3</p>	<p>You can find a firm stance in rule 173-39-05.</p>

GENERAL

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
104	<p>In general, we agree that background checks and verification of work requirements are appropriate and important to protecting the safety of vulnerable populations.</p> <p>Chris Hendriksen, President VRI</p>	<p>Thank you.</p>
105	<p>The changes to the criminal background check are very difficult to comprehend, which to implement will require provider training.</p> <p>Kathleen M. Geise, RN, Quality Assurance Manager Catholic Social Services of the Miami Valley</p>	<p>The language in H.B.487 on which the Criminal Records Check rules are based is effective on January, 1, 2013. The criminal records check rules will be effective on January 1, 2013 as well. ODA will be offering guidance on these new requirements.</p>

RULES WITH COLLATERAL AMENDMENTS

RULE 173-9-01 (for rescission)

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
	NO COMMENTS RECEIVED	NA

RULE 173-14-14

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
	NO COMMENTS RECEIVED	NA

RULE 173-14-14 (for rescission)

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
	NO COMMENTS RECEIVED	NA

RULE 173-3-06

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
	NO COMMENTS RECEIVED	NA

RULE 173-39-02

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
	NO COMMENTS RECEIVED	NA

RULE 173-39-03

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
	NO COMMENTS RECEIVED	NA

RULE 173-39-05

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
	NO COMMENTS RECEIVED	NA

RULE 173-39-05.1

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
	NO COMMENTS RECEIVED	NA

RULE 173-39-07

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
	NO COMMENTS RECEIVED	NA

RULE 173-40-06

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
	NO COMMENTS RECEIVED	NA

RULE 173-42-06

	THE PUBLIC'S COMMENTS	ODA'S RESPONSES
	NO COMMENTS RECEIVED	NA