CSI - Ohio
The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Job and Family Services

Regulation/Package Title: 5101:3-45 Criminal Record Check Rules

Rule Number(s): OAC 5101:3-45-07, 5101:3-45-08 and 5101:3-45-11

Date: _____

Rule Type:

X New
☐ Amended
X 5-Year Review
X Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. **Please briefly describe the draft regulation in plain language.**

Rules 5101:3-45-07, 5101:3-45-08 and 5101:3-45-11 of the Ohio Administrative Code (OAC) implement the criminal records check requirements set forth in sections 109.572, 5111.033 and

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5111.034 of the Ohio Revised Code. The rules require each applicant for, and every employee in, a full-time, part-time or temporary position that involves providing home and community-based services (HCBS) to individuals enrolled on the Ohio Home Care, Transitions DD and Transitions Carve-Out Waiver Programs to undergo a criminal records check from the Bureau of Criminal Investigation and Identification (BCII). An additional Federal Bureau of Investigation (FBI) criminal records check is required if the applicant or employee cannot prove continued residency in Ohio for the previous five years. Additionally, the rules set forth a recheck requirement of every five years for agency employees, and annually for independent providers. The rules provide the list of disqualifying offenses that may prohibit an individual from working in a position that involves providing HCBS. Further, the rules authorize the conditional employment by an agency of an individual for up to sixty days while awaiting the results of the criminal records check. Finally, the rules establish the exclusionary period for which individuals convicted of certain crimes may not be hired.

The specific actions taken for each rule and each rule's content is set forth below.

OAC 5101:3-45-07

This new rule replaces current OAC rule 5101:3-45-07 and sets forth the criminal records check requirements for agency providers of HCBS under the Ohio Home Care, Transitions DD and Transitions Carve-Out Waiver Programs. The rule:

- Establishes key definitions including, but not limited to: "applicant," "chief administrator," "community-based long term care agency," "disqualifying offense," "employee," "home and community-based services Medicaid waiver component" and "waiver agency."
- Establishes a required review of various free databases for disqualifying information regarding an applicant or employee prior to conducting a criminal records check of an applicant or employee.
- Exempts from database reviews and criminal records checks those individuals who are already subject to criminal records check requirements in accordance with section 3701.881 or section 173.394 of the Revised Code.
- Phases in a required five-year criminal records recheck. Employees hired prior to January 1, 2008 will be rechecked within thirty days of the anniversary of their date of hire, and employees hired on or after January 1, 2008 will be rechecked within thirty days of the five-year anniversary of their date of hire.
- Requires a fee to be paid to BCII by the waiver agency, which may be passed on to the applicant or employee.

- Provides for a 60-day period of conditional employment while the waiver agency awaits the results of the criminal records check. The rule requires the waiver agency to terminate an individual if the results are not received within 60 days of the request or if the results disclose a disqualifying offense and the waiver agency does not choose to employ the individual after the exclusionary periods set forth in OAC rule 5101:3-45-11 have elapsed.

- Establishes recordkeeping requirements pertaining to the criminal records check.

- Sets forth to whom the results of the records check may be disclosed.

OAC 5101:3-45-08

This new rule replaces, in part, rescinded rule 5101:3-45-08 and sets forth the criminal records check requirements for independent providers of Home and Community Based-Services (HCBS) under the Ohio Home Care, Transitions DD and Transitions Carve-Out Waiver Programs. The rule:

- Establishes key definitions including but not limited to: "anniversary date," "applicant," "disqualifying offense," "effective date of provider agreement," "home and community-based services Medicaid waiver component" and "independent provider."

- Requires annual criminal records rechecks for all independent providers.

- Requires a fee to be paid to BCII by the independent provider.

- Establishes recordkeeping requirements pertaining to the criminal records check.

- Sets forth to whom the results of the records check may be disclosed.

OAC 5101:3-45-11

OAC 5101:3-45-11 is a new rule that sets forth the exclusionary periods for disqualifying offenses. This rule also sets forth the effect of certificates of qualification for employment, certificates of achievement and employability, and pardons. The new exclusionary periods are as follows:

- Permanent Bar – Cannot be hired in a direct care position;

- Ten Year Bar – Can be hired after ten years have elapsed from the date the applicant or employee was fully discharged from all imprisonment, probation, or parole. For individuals with multiple disqualifying offenses, of which at least one falls under the ten year bar, the individual

can be hired after fifteen years have elapsed from the date the applicant or employee was fully discharged from all imprisonment, probation, or parole.

- Seven Year Bar - Can be hired after seven years have elapsed from the date the applicant or employee was fully discharged from all imprisonment, probation, or parole. For individuals with multiple disqualifying offenses, of which at least one falls under the seven year bar, the individual can be hired after ten years have elapsed from the date the applicant or employee was fully discharged from all imprisonment, probation, or parole.

- Five Year Bar - Can be hired after five years have elapsed from the date the applicant or employee was fully discharged from all imprisonment, probation, or parole. For individuals with multiple disqualifying offenses, of which at least one falls under the five year bar, the individual can be hired after seven years have elapsed from the date the applicant or employee was fully discharged from all imprisonment, probation, or parole.

- No Bar - Can be hired at any time.

Unless the individual was convicted of a disqualifying offense that falls under the permanent bar, a waiver agency may hire or continue to employ; and an Ohio Home Care, Transitions DD or Transitions Carve-Out Waiver consumer can choose to receive services from, individuals with either a certificate of qualification for employment issued by a court of common pleas with competent jurisdiction or a certificate of achievement and employability in an HCBS-related field, issued by the department of rehabilitation.

Finally, a waiver agency may hire, and an Ohio Home Care, Transitions DD or Transitions Carve-Out Waiver consumer can choose to receive services from, an individual at any time if that individual has received a pardon or had a conviction or guilty plea set aside.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Ohio Revised Code sections 5111.033, 5111.034 and 5111.85.

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?
If yes, please briefly explain the source and substance of the federal requirement.

No.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

These rules implement the statutory requirements set forth in sections 109.572, 5111.033 and 5111.034 of the Revised Code. They provide the necessary framework for the Ohio Department of Job and Family Services to enforce with the aforementioned statutory requirements, as well as assure the health and welfare of individuals participating in the Ohio Home Care, Transitions DD and Transitions Carve-Out Waivers in accordance with 42 CFR 441.302 (a). Specifically, 42 CFR 441.302(a) states:

(a) Health and Welfare—Assurance that necessary safeguards have been taken to protect the health and welfare of the recipients of the services. Those safeguards must include—

(1) Adequate standards for all types of providers that provide services under the waiver;

(2) Assurance that the standards of any State licensure or certification requirements are met for services or for individuals furnishing services that are provided under the waiver; and

(3) Assurance that all facilities covered by section 1616(e) of the Act, in which home and community-based services will be provided, are in compliance with applicable State standards that meet the requirements of 45 CFR Part 1397 for board and care facilities.

One way ODJFS helps to ensure the health and welfare of recipients of waiver services is by requiring that those individuals providing such care submit to a criminal records check.

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

Successful outcomes are measured through a finding of compliance with these standards. Additionally, the expectation is a reduction in the number of allegations of criminal activity on the part of HCBS waiver service providers.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.
If applicable, please include the date and medium by which the stakeholders were initially contacted.

Stakeholder outreach was facilitated by the Governor's Office of Health Transformation and not through ODJFS. See Attachment III for details.

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

Stakeholders were generally supportive of OAC rules 5101:3-45-07, 5101:3-45-08 and 5101:3-45-11, although it was acknowledged that the more frequent criminal records checks have a financial cost to providers. Most notably, providers are supportive of the exclusionary periods set forth in rule 5101:3-45-11. The following specific concerns have been addressed:

- Five-year recheck, rather than the proposed three.
- Recheck is from the anniversary of date of hire.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

The following articles were used in developing the exclusionary period tiers set forth in OAC rule 5101:3-45-11:

- *Redemption in the Presence of Widespread Criminal Background Checks*, Criminology, 47: 327–359. 2009.
- *Scarlet Letters and Recidivism: Does an Old Crime Predict Future Offending?* Criminology and Public Policy 5:493-522. 2006.
- *Enduring Risk: Does an Old Crime Predict Future Offending?* Crime and Delinquency 53:64-83. 2007.
- *When Do Ex-Offenders Become Like Non-Offenders?* Howard Journal of Criminal Justice 48:373-87. 2009.
- *The Predictive Value of Criminal Background Checks: Do Age and Criminal History Affect Time To Redemption?* Criminology 49:27-60. 2011.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The Ohio Department of Job and Family Services is required to implement sections 109.572, 5111.033 and 5111.034 of the Revised Code. Alternative regulations to these three rules were not considered. The rules reflect the current statutory requirements and the industry-approved exclusionary periods.

11. Did the Agency specifically consider a performance-based regulation? Please explain. ***Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

A performance-based regulation was not deemed appropriate for this standard and was not authorized by statute.

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

The agency conducted a thorough review of the Ohio Revised Code and Ohio Administrative Code to ensure there are no other regulations in place pertaining to these specific criminal records check requirements. OAC Rules 5101:3-45-07, 5101:3-45-08 and 5101:3-45-11 are the only rules applicable to Ohio Home Care, Transitions DD and Transitions Carve-Out Waiver providers.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

At the time of provider compliance reviews and during investigations of alleged health and welfare violations, ODJFS shall examine the provider's records to assure that criminal records check requirements are being applied consistently and predictably as set forth in the regulations.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

For the purposes of these rules,

- "Waiver agency" means a person or government entity that provides HCBS under an Ohio Home Care, Transitions DD or Transitions Carve-Out Waiver, other than a person or government entity that is certified under the Medicare program. It does not include independent providers. It is estimated 150-200 waiver agencies will be affected by these changes.

- "Independent Provider" means a person who has a Medicaid provider agreement to provide HCBS as an independent provider in the Ohio Home Care, Transitions DD or Transitions Carve-Out Waiver. Independent provider is interchangeable with the term "non-agency provider" in Chapters 5101:3-45, 5101:3-46, 5101:3-47 and 5101:3-50 of the Administrative Code. Approximately 12,000 independent providers will be affected by these rules.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

Fees for BCII and FBI records checks and additional administrative time necessary to conduct a database check and to request the criminal records check and compile a personnel record.

c. Quantify the expected adverse impact from the regulation.
The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

1) Administrative time conducting the database check.

2) Fee for Bureau of Criminal Investigation and Identification criminal records check for all applicants considered for employment is $22.00, which may vary from county to county.

3) Fee for criminal records check from Federal Bureau of Investigation for each applicant considered for employment, who has not resided in Ohio for five years is $24.00, which may vary from county to county. BCII accepts and processes FBI background checks.

4) Time spent requesting a criminal records check and compiling personnel records:

The administrative cost for conducting a database review is $24 per hour based on industry estimates. ODJFS estimates that for waiver agencies the database review would take approximately 20 minutes per applicant/employee at a cost of $8 administrative time per database review.

The cost to an average waiver agency, using an average cost of $100.00 across employee types (registered nurses, licensed practical nurses, home health aides, and therapists):

- **$1,806** for employees hired before January 1, 2008; and
- **$361** each year going forward for employees hired in subsequent years.

Based upon these assumptions, ODJFS estimates a cost of $361,193 to waiver agencies for first year and $72,238 in subsequent years. Additionally, each agency will be required to either pay or pass on the cost for criminal records checks of new applicants that pass the database check, which average $100 across employee types. See Attachments for specific information.

5) Independent providers will be responsible for the costs associated with their own background checks. This is consistent with current statute and practice.

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

The criminal records check is a valuable tool for waiver agencies to use when making prudent employment decisions, and for waiver consumers when selecting service providers. It helps to ensure the safety and protection of consumers receiving home health services.

Regulatory Flexibility

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

No, the criminal records check requirements are established by statute and may not be waived for any individual employed to provide HCBS in the Ohio Home Care, Transitions DD and Transitions Carve-Out Waivers.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

The waiver of penalties and fines for first-time paperwork offenses set forth in section 119.14 of the Ohio Revised Code will not be applied to the substantive statutory requirement for criminal records checks established in sections 5111.033 and 5111.034 of the Ohio Revised Code.

The requirement for a criminal records check by a waiver agency does not involve the direct collection of information or paperwork by the ODJFS or another regulatory body; the waiver agency is required to obtain and maintain a criminal records check for each applicant considered for employment involving providing direct care and each employee that provides direct care to an individual.

Failure to conduct a criminal records check on applicants for employment represents a significant potential for serious harm to health and welfare of waiver consumers and the public interest. As authorized by the applicable state laws and rules governing the specific waiver agency, ODJFS may take appropriate action against an HCBS provider that violates the requirements of these rules and section 5111.033 or 5111.034, as appropriate, of the Revised Code.

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

The agency maintains program staff that can assist and provide guidance or technical assistance to waiver agencies and independent providers to maintain compliance through the Bureau of Long Term Care Services and Supports:

BLTCSS@jfs.ohio.gov

Criminal records checks are obtained through BCII. Assistance may be received through the office of the Attorney General:

http://www.ohioattorneygeneral.gov/Enforcement/BCI

5101:3-45-07 **Ohio home care waiver, transitions DD waiver and transitions carve-out waiver programs: Criminal records checks involving agency providers.**

(A) Unless otherwise stated in paragraphs (A)(1) and (A)(2) of this rule, this rule sets forth the process and requirements for the criminal records checks of persons under final consideration for employment with a waiver agency, and existing employees with a waiver agency in a full-time, part-time or temporary position, and who are providing home and community-based services (HCBS) in an Ohio home care waiver, transitions DD waiver and/or transitions carve-out waiver. This rule does not apply to:

(1) Any individual who is subject to a database review or a criminal records check under section 3701.881 of the Revised Code and rules adopted thereunder.

(2) Applicants and employees of a waiver agency that is also a community-based long term care agency who are subject to database reviews and criminal records checks in accordance with section 173.394 of the Revised Code and rules adopted thereunder.

(B) For the purposes of this rule,

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

(2) "Chief administrator" means the head of a waiver agency, or his or her designee.

(3) "Community-based long term care agency" has the same meaning as in section 173.39 of the Revised Code.

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

(5) "Department" means the Ohio department of job and family services (ODJFS).

(6) "Disqualifying offense" means any of the following:

(a) A violation of section 959.13, 959.131, 2903.01, 2903.02, 2903.03, 2903.04, 2903.041, 2903.11, 2903.12, 2903.13, 2903.15, 2903.16, 2903.21, 2903.211, 2903.22, 2903.34, 2903.341, 2905.01, 2905.02, 2905.05, 2905.11, 2905.12, 2905.32, 2905.33, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.24, 2907.25, 2907.31, 2907.32, 2907.321,

2907.322, 2907.323, 2907.33, 2909.02, 2909.03, 2909.04, 2909.22, 2909.23, 2909.24, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.05, 2913.11, 2913.21, 2913.31, 2913.32, 2913.40, 2913.41, 2913.42, 2913.43, 2913.44, 2913.441, 2913.45, 2913.46, 2913.47, 2913.48, 2913.49, 2913.51, 2917.01, 2917.02, 2917.03, 2917.31, 2919.12, 2919.121, 2919.123, 2919.22, 2919.23, 2919.24, 2919.25, 2921.03, 2921.11, 2921.12, 2921.13, 2921.21, 2921.24, 2921.32, 2921.321, 2921.34, 2921.35, 2921.36, 2921.51, 2923.12, 2923.122, 2923.123, 2923.13, 2923.161, 2923.162, 2923.21, 2923.32, 2923.42, 2925.02, 2925.03, 2925.04, 2925.041, 2925.05, 2925.06, 2925.09, 2925.11, 2925.13, 2925.14, 2925.22, 2925.23, 2925.24, 2925.36, 2925.55, 2925.56, 2927.12 or 3716.11 of the Revised Code, felonious sexual penetration in violation of former section 2907.12 of the Revised Code, a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996; or

(b) A violation of section 2923.01, 2923.02, or 2923.03 of the Revised Code when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses listed in paragraph (B)(6)(a) of this rule; or

(c) A violation of an existing or former municipal ordinance or law of the state of Ohio, any other state, or the United States that is substantially equivalent to any of the disqualifying offenses as set forth in paragraph (B)(6)(a) or (B)(6)(b) of this rule.

(7) "Employee" means a person employed by a waiver agency in a full-time, part-time, or temporary position that involves providing HCBS.

(8) "Home and community-based services medicaid waiver component" has the same meaning as in section 5111.85 of the Revised Code. For the purposes of this rule, "home and community-based services medicaid waiver component" is interchangeable with Ohio home care waiver, transitions DD waiver and/or transitions carve-out waiver.

(9) "Waiver agency" means a person or government entity that provides HCBS under an Ohio home care waiver, transitions DD waiver or transitions carve-out waiver, other than such a person or government entity that is certified under the medicare program. "Waiver agency" does not mean an independent provider as defined in section 5111.034 of the Revised Code or rule 5101:3-45-08 of the Administrative Code.

(C) No waiver agency shall employ an applicant or continue to employ an employee in a position that involves providing HCBS in an Ohio home care waiver, transitions DD waiver or transitions carve-out waiver if the applicant or employee:

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

(a) The excluded parties list system maintained by the United States general services administration pursuant to subpart 9.4 of the federal acquisition regulation;

(b) The list of excluded individuals and entities maintained by the office of inspector general in the United States department of health and human services pursuant to section 1128 of the "Social Security Act," 94 Stat.2619 (1980), 42 U.S.C. 1320a-7, as amended, and section 1156 of the "Social Security Act," 96 Stat. 388 (1982), 42 U.S.C. 1320c-5, as amended;

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

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

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

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

(2) Fails to:

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

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

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

(D) Process for conducting criminal records checks.

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

(2) Except as otherwise noted in paragraph (C)(1) of this rule, the chief administrator of a waiver agency shall require each applicant to request that the BCII superintendent conduct a criminal records check with respect to the waiver agency applicant, and pursuant to sections 109.572 and 5111.033 of the Revised Code. The applicant must provide a set of fingerprint impressions as part of the criminal records check.

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

(b) Even if an applicant presents proof of having been a resident of the state of Ohio for the five-year period, the chief administrator may require the applicant to request that the superintendent obtain information from the FBI in the criminal records check.

(3) The chief administrator of a waiver agency shall provide the following to each applicant for whom a criminal records check is required by this rule:

(a) Information about accessing, completing and forwarding to the superintendent the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and the standard fingerprint impression sheet presented pursuant to division (C)(2) of that section; and

(b) Written notification that the applicant is to instruct the superintendent to submit the completed report of the criminal records check directly to the chief administrator of the waiver agency.

(4) Conditional employment.

(a) A waiver agency may conditionally employ an applicant for whom a

criminal records check is required by this rule prior to obtaining the results of that check, provided that the waiver agency has conducted a review of the databases listed in paragraph (C)(1) of this rule and has determined the waiver agency is not prohibited from employing the applicant in that position. The chief administrator must require the applicant to request a criminal records check no later than five business days after he or she begins conditional employment.

(b) The waiver agency shall terminate conditional employment if the results of the criminal records check request, other than the results of any request for information from the FBI, are not obtained within sixty days of the criminal records check request.

(5) If the results of the criminal records check indicate that the individual has been convicted of, or has pleaded guilty to any of the disqualifying offenses set forth in paragraph (B)(6) of this rule, and regardless of the date of conviction or the date of entry of the guilty plea, then the waiver agency shall either:

(a) Terminate his or her employment; or

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

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

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

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

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

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

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

(c) The director of ODJFS and the staff of the department who are involved in the administration of the Ohio medicaid program;

(d) The director of ODA or the director's designee if the waiver agency also is a community-based long-term care agency; and

(e) Any court, hearing officer or other necessary individual involved in a case dealing with a denial of employment of the applicant or termination of the employee; employment or unemployment benefits of the applicant or employee; or a civil or criminal action regarding the Ohio medicaid program.

(E) As a condition of continuing to employ an individual in a position that involves providing HCBS in the Ohio home care waiver, transitions DD waiver or transitions carve-out waiver, the chief administrator of the waiver agency shall conduct a criminal records check of that employee at least once every five years according to one of the following three schedules set forth in paragraphs (E)(1) to (E)(3) of this rule. The chief administrator shall follow the same process set forth in paragraphs (D)(1) to (D)(9) of this rule.

(1) If the chief administrator of the waiver agency hired the employee before January 1, 2008, the chief adminstrator shall conduct a criminal records check of the employee no later than thirty days after the 2013 anniversary of the employee's date of hire and no later than thirty days after each anniversary date every five years after 2013.

(2) If the chief administrator of the waiver agency hired the employee on or after January 1, 2008, the chief administrator shall conduct a criminal records check of the employee no later than thirty days after the fifth anniversary of the employee's date of hire and no later than thirty days after each anniversary date every five years after the first fifth-year anniversary.

(3) The chief administrator of the waiver agency may conduct a criminal records check on any employee more frequently than every five years without any need to conduct a criminal records check according to the schedules set forth in paragraphs (E)(1) and (E)(2) of this rule.

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

(1) The applicant or employee has satisfied the conditions associated with the exclusionary periods set forth in rule 5101:3-45-11 of the Administrative Code; or

(2) The applicant or employee has obtained a certificate of qualification for employment issued by a court of common pleas with competent jurisdiction pursuant to section 2953.25 of the Revised Code, and in accordance with rule 5101:3-45-11 of the Administrative Code; or

(3) The applicant or employee has obtained a certificate of achievement and employability in an HCBS-related field, issued by the Ohio department of rehabilitation and corrections pursuant to section 2961.22 of the Revised Code, and in accordance with rule 5101:3-45-11 of the Administrative Code; and

(4) The applicant or employee has agreed, in writing, to have the waiver agency inform each potential consumer of the disqualifying offense, and has acknowledged, in writing, that the potential consumer has the right to select or reject to receive services from the applicant or employee, prior to commencing service delivery.

(G) Pardons.

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

(1) The applicant or employee has been granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code;

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

(3) The applicant or employee has been granted a conditional pardon for the offense pursuant to Chapter 2967. of the Revised Code, and the condition(s) under which the pardon was granted have been satisfied; or

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

(H) Documentation - criminal records check logs.

(1) The chief administrator of a waiver agency shall maintain criminal records

check logs for applicants and employees that are separate from their personnel records. Such logs shall contain the following information:

(a) Names of all applicants or employees;

(b) The date of application;

(c) The date the applicant or employee started work;

(d) The date the chief administrator conducted a review of the databases listed in paragraph (C)(1) of this rule and determined the waiver agency is not prohibited from employing the applicant or continuing to employ the employee in that position;

(e) The date the criminal records check request was submitted to BCII;

(f) The type(s) of criminal records checks required (i.e., BCII, FBI or both);

(g) The date of the BCII and/or FBI report;

(h) The date the BCII and FBI checks were received by the waiver agency;

(i) Whether or not the results of the check revealed that the applicant or employee committed a disqualifying offense(s), and if applicable, the specific offense(s) and date(s) committed;

(j) The number of references received on behalf of the applicant, the dates that the references were received, and how the references were verified;

(k) Whether the conditions or certificates referenced in paragraph (F) of this rule were applied as a condition for employment; and

(l) Whether or not the applicant or employee was conditionally hired, hired, and/or terminated.

(2) The chief administrator of a waiver agency shall certify in the criminal record checks logs that the waiver agency has considered and applied the conditions and certificates referenced in paragraph (F) of this rule when hiring an applicant or continuing to employ the employee whose criminal background check results reveal the commission of a disqualifying offense as set forth in paragraph (B)(6) of this rule.

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5101:3-45-08 **Ohio home care waiver, transitions DD waiver and transitions carve-out waiver programs: Criminal records checks involving independent providers.**

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

(B) For the purposes of this rule,

(1) "Anniversary date" means the later of the effective date of the provider agreement relating to the independent provider or sixty days after the effective date of section 5111.034 of the Revised Code (September 26, 2003).

(2) "Applicant" means a person who has applied for a medicaid provider agreement to provide HCBS as an independent provider under a home and community-based medicaid waiver component administered by ODJFS.

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

(4) "Department" means ODJFS.

(5) "Disqualifying offense" means any of the following:

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

the Revised Code as it existed prior to July 1, 1996; or

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

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

(6) "Effective date of provider agreement" means the month in which the initial provider agreement was entered into between the department and the provider.

(7) "Home and community-based services medicaid waiver component" has the same meaning as in section 5111.85 of the Revised Code. For the purposes of this rule, "home and community-based services medicaid waiver component" is interchangeable with Ohio home care waiver, transitions DD waiver and/or transitions carve-out waiver.

(8) "Independent provider" means a person who has a medicaid provider agreement to provide HCBS as an independent provider in the Ohio home care waiver, transitions DD waiver and/or the transitions carve-out waiver. The term "independent provider" is interchangeable with the term "non-agency provider" in chapters 5101:3-45, 5101:3-46, 5101:3-47 and 5101:3-50 of the Administrative Code.

(9) "Superintendent" means superintendent of the bureau of criminal identification and investigation (BCII).

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

(1) After the applicant or independent provider is given the information and notification required by paragraphs (D)(3)(a) and (D)(3)(b) of this rule, the applicant or independent provider fails to do any of the following:

(a) Access, complete, and forward to the superintendent of BCII the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code, or the standard impression sheet prescribed pursuant to division (C)(2) of that section;

(b) Submit a criminal records check within sixty days of notification;

(c) Instruct the superintendent to submit the completed report of the criminal records check directly to ODJFS or its designee; or

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

(D) Process for conducting criminal records checks.

(1) The department or its designee shall inform:

(a) Each applicant, at the time of initial application for a medicaid provider agreement, is required to provide a set of his or her fingerprint impressions, and a criminal records check must be conducted as a condition of the department's approving the application; and

(b) Each currently-enrolled independent provider, before the anniversary date of their medicaid provider agreement, that he or she is required to provide a set of his or her fingerprint impressions and that a criminal records check must be conducted as a condition of continued approval as an independent provider in the Ohio medicaid program.

(2) The department or its designee shall require the applicant to complete a criminal records check prior to entering into a medicaid provider agreement with the applicant, and once an independent provider, at least annually thereafter.

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

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

(3) The department or its designee shall provide the following to each applicant and

independent provider for whom a criminal records check is required by this rule:

(a) Information about accessing, completing and forwarding to the superintendent the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and the standard fingerprint impression sheet prescribed pursuant to division (C)(2) of that section; and

(b) Written notification that the applicant or independent provider is to instruct the superintendent to submit the completed report of the criminal records check directly to the department or its designee.

(4) The applicant and independent provider shall pay BCII the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for each criminal records check conducted on his or her behalf pursuant to this rule.

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

(a) The person who is the subject of the criminal records check or his or her representative;

(b) The director of ODJFS and the staff of the department involved in the administration of the Ohio medicaid program;

(c) The department's designee;

(d) An individual who receives, or may receive, waiver services from the person who is the subject of the criminal records check; and

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

(6) If the independent provider fails to comply with the provisions of this rule, the department shall initiate termination of the medicaid provider agreement.

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

(1) The applicant or independent provider has satisfied the conditions associated with the exclusionary periods set forth in rule 5101:3-45-11 of the

Administrative Code; or

(2) The applicant or independent provider has obtained a certificate of qualification for employment issued by a court of common pleas with competent jurisdiction pursuant to section 2953.25 of the Revised Code, and in accordance with rule 5101:3-45-11 of the Administrative Code; or

(3) The applicant or independent provider has obtained a certificate of achievement and employability in an HCBS-related field issued by the Ohio department of rehabilitation and corrections pursuant to section 2961.22 of the Revised Code, and in accordance with rule 5101:3-45-11 of the Administrative Code.

(F) Pardons.

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

(1) The applicant or independent provider has been granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code;

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

(3) The applicant or independent provider has been granted a conditional pardon for the offense pursuant to Chapter 2967. of the Revised Code, and the condition(s) under which the pardon was granted have been satisfied; or

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

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5101:3-45-11 **Ohio home care waiver, transitions DD waiver and transitions carve-out waiver programs: Exclusionary Periods for Disqualifying Offenses; Certificates; and Pardons.**

(A) Except as set forth in paragraph (H) of this rule, a waiver agency may employ an applicant or continue to employ an employee who has been convicted of or pleaded guilty to an offense listed in paragraph (B)(6) of rule 5101:3-45-07 of the Administrative Code in a position involving providing home and community-based services (HCBS) to a consumer enrolled on the Ohio home care waiver, transitions DD waiver or transitions carve-out waiver pursuant to the timeframes set forth in this rule.

(B) Except as set forth in paragraph (H) of this rule, an applicant or independent provider who has been convicted of or pleaded guilty to an offense listed in paragraph (B)(5) of rule 5101:3-45-08 of the Administrative Code may be selected by a consumer enrolled on the Ohio home care waiver, transitions DD waiver or transitions carve-out waiver to provide them with HCBS pursuant to the timeframes set forth in this rule.

(C) Tier I. Permanent exclusion.

(1) No waiver agency shall employ an applicant or continue to employ an employee in a position that involves providing HCBS to a consumer, nor shall an independent provider provide HCBS to a consumer, if the applicant, employee or independent provider has been convicted of or pleaded guilty to, an offense in any of the following sections of the Revised Code:

(a) 2903.01 (aggravated murder);

(b) 2903.02 (murder);

(c) 2903.03 (voluntary manslaughter);

(d) 2903.11 (felonious assault);

(e) 2903.15 (permitting child abuse);

(f) 2903.16 (failing to provide for a functionally-impaired person);

(g) 2903.34 (patient abuse or neglect);

(h) 2903.341 (patient endangerment);

(i) 2905.01 (kidnapping);

(j) 2905.02 (abduction);

(k) 2905.32 (human trafficking);

(l) 2905.33 (unlawful conduct with respect to documents);

(m) 2907.02 (rape);

(n) 2907.03 (sexual battery);

(o) 2907.04 (unlawful sexual conduct with a minor, formerly corruption of a minor);

(p) 2907.05 (gross sexual imposition);

(q) 2907.06 (sexual imposition);

(r) 2907.07 (impositioning);

(s) 2907.08 (voyeurism);

(t) 2907.12 (felonious sexual penetration);

(u) 2907.31 (disseminating matter harmful to juveniles);

(v) 2907.32 (pandering obscenity);

(w) 2907.321 (pandering obscenity involving a minor);

(x) 2907.322 (pandering sexually-oriented matter involving a minor);

(y) 2907.323 (illegal use of a minor in nudity-oriented material or performance);

(z) 2909.22 (soliciting or providing support for act of terrorism);

(aa) 2909.23 (making terroristic threats);

(bb) 2909.24 (terrorism);

(cc) 2913.40 (medicaid fraud);

(dd) If related to another offense under paragraph (C)(1) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or

(2) A conviction related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct involving a federal or

state-funded program, excluding the disqualifying offenses set forth in section 2913.46 (illegal use of food assistance or women, infants, and children (WIC) program benefits) and paragraph (D)(1)(m) of this rule; or.

(3) A violation of an existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses or violations described in paragraphs (B)(1) or (B)(2) of this rule.

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

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

(a) 2903.04 (involuntary manslaughter);

(b) 2903.041 (reckless homicide);

(c) 2905.04 (child stealing);

(d) 2905.05 (child enticement);

(e) 2905.11 (extortion);

(f) 2907.21 (compelling prostitution);

(g) 2907.22 (promoting prostitution);

(h) 2907.23 (procuring);

(i) 2909.02 (aggravated arson);

(j) 2909.03 (arson);

(k) 2911.01 (aggravated robbery);

(l) 2911.11 (aggravated burglary);

(m) 2913.46 (illegal use of food assistance or WIC program benefits);

(n) 2913.48 (worker's compensation fraud);

(o) 2913.49 (identify fraud);

(p) 2917.02 (aggravated riot);

(q) 2923.12 (carrying concealed weapons);

(r) 2923.122 (illegal conveyance or possession of deadly weapon or danger ordinance);

(s) 2923.123 (illegal conveyance of deadly weapon into courthouse);

(t) 2923.161 (improperly discharging a firearm at or into a habitation or school);

(u) 2923.162 (discharge of firearm on or near prohibited premises);

(v) 2923.21 (improperly furnishing firearms to minor);

(w) 2923.32 (engaging in a pattern of corrupt activity);

(x) 2923.42 (participating in criminal gang);

(y) 2925.02 (corrupting another with drugs);

(z) 2925.03 (trafficking in drugs);

(aa) 2925.04 (illegal manufacture of drugs or cultivation of marijuana);

(bb) 2925.041 (illegal assembly);

(cc) 3716.11 (placing harmful or hazardous objects in food or confection); or

(dd) If related to an offense under paragraph (D)(1) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or

(2) A violation of an existing or former municipal ordinance or law of this state, any other state or the United States that is substantially equivalent to any of the offenses or violations described under paragraph (D)(1) of this rule.

(3) If an applicant, employee or independent provider has been convicted of multiple disqualifying offenses, inclucing an offense listed in paragraphs (D)(1) or (D)(2) of this rule, and another offense or offenses listed in paragraphs (D)(1), (D)(2), (E)(1), (E)(2), (F)(1) or (F)(2) of this rule, the applicant, employee or independent provider is subject to a fifteen-year exclusionary period beginning on the date the applicant, employee or independent provider was fully discharged from all imprisonment, probation or parole for the most recent offense.

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

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

(a) 959.13 (cruelty to animals);

(b) 959.131 (prohibitions concerning companion animals);

(c) 2903.12 (aggravated assault);

(d) 2903.21 (aggravated menacing);

(e) 2903.211 (menacing by stalking);

(f) 2905.12 (coercion);

(g) 2909.04 (disrupting public services);

(h) 2911.02 (robbery);

(i) 2911.12 (burglary);

(j) 2913.47 (insurance fraud);

(k) 2917.01 (inciting to violence);

(l) 2917.02 (aggravated riot);

(m) 2917.03 (riot);

(n) 2917.31 (inducing panic);

(o) 2919.22 (endangering children):

(p) 2919.25 (domestic violence);

(q) 2921.03 (intimidation);

(r) 2921.11 (purjury);

(s) 2921.13 (falsification - in theft offense or to purchase firearm);

(t) 2921.34 (escape);

(u) 2921.35 (aiding escape or resistance to lawful authority);

(v) 2921.36 (illegal conveyance of weapons, drugs or other prohibited items onto grounds of tention facility or institution);

(w) 2925.05 (funding drug trafficking);

(x) 2925.06 (illegal administration or distribution of anabolic steroids);

(y) 2925.24 (tampering with drugs);

(z) 2927.12 (ethnic intimidation); or

(aa) If related to an offense under paragraph (E)(1) of this rule, 2931.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or

(2) A violation of an existing or former municipal ordinance or law of this state, any other state or the United States that is substantially equivalent to any of the offenses or violations described under paragraph (E)(1) of this rule.

(3) If an applicant, employee or independent provider has been convicted of multiple disqualifying offenses, inclucing an offense listed in paragraphs (E)(1) or (E)(2) of this rule, and another offense or offenses listed in paragraphs (E)(1), (E)(2), (F)(1) or (F)(2) of this rule, the applicant, employee or independent provider is subject to a ten-year exclusionary period beginning on the date the applicant, employee or independent provider was fully discharged from all imprisonment, probation or parole for the most recent offense.

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

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

(a) 2907.09 (public indecency);

(b) 2907.24 (soliciting);

(c) 2907.25 (prostitution);

(d) 2907.33 (deception to obtain matter harmless);

(e) 2911.13 (breaking and entering);

(f) 2913.02 (theft);

(g) 2913.03 (unauthorized use of a vehicle);

(h) 2913.04 (unauthorized use of property, computer, cable or telecommunication property);

(i) 2913.05 (telecommunication fraud);

(j) 2913.11 (passing bad checks);

(k) 2913.21 (misuse of credit cards);

(l) 2913.31 (forgery);

(m) 2913.32 (criminal simulation);

(n) 2913.41 (defrauding a rental agency or hostelry);

(o) 2913.42 (tampering with records);

(p) 2913.43 (securing writings by deception);

(q) 2913.44 (personating an officer);

(r) 2913.441 (unlawful display of law enforcement emblem);

(s) 2913.45 (defrauding creditors);

(t) 2913.51 (receiving stolen property);

(u) 2919.12 (unlawful abortion);

(v) 2919.121 (unlawful abortion upon minor);

(w) 2919.123 (unlawful distribution of an abortion-inducing drug);

(x) 2919.23 (interference with custody);

(y) 2919.24 (contributing to the unruliness or delinquency of a child);

(z) 2921.12 (tampering with evidence);

(aa) 2921.24 (disclosure of confidential information);

(bb) 2921.32 (obstructing justice);

(cc) 2921.321 (assaulting or harassing a police dog, horse, or service animal);

(dd) 2921.51 (impersonation of peace officer);

(ee) 2925.09 (unapproved drugs);

(ff) 2925.11 (drug possession, other than a minor drug possession offense);

(gg) 2925.13 (permitting drug abuse);

(hh) 2925.22 (deception to obtain a dangerous drug);

(ii) 2925.23 (illegal processing of drug documents);

(jj) 2925.23 (dispensing drug samples);

(kk) 2925.55 (unlawful purchase of pseudoephedrine product);

(ll) 2925.56 (unlawful sale of pseudoephedrine product);

(mm) If related to an offense under paragraph (F)(1) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or

(2) A violation of an existing or former municipal ordinance or law of this state, any other state or the United States that is substantially equivalent to any of the offenses or violations described under paragraph (F)(1) of this rule.

(3) If an applicant, employee or independent provider has been convicted of multiple disqualifying offenses listed in paragraphs (F)(1) or (F)(2) of this rule, the applicant, employee or independent provider is subject to a seven-year exclusionary period beginning on the date the applicant, employee or independent provider was fully discharged from all imprisonment, probation or parole for the most recent offense.

(G) Tier V. No exclusionary period.

(1) A waiver agency may employ an applicant or continue to employ an employee in a position that involves providing HCBS to a consumer, and an independent provider may provide HCBS to a consumer if the applicant, employee or independent provider has been convicted of or pleaded guilty to, any of the following offenses:

(a) 2921.21 (non-support/contributing to non-support of dependents);

(b) 2925.11 (drug possession that is a minor drug possession offense); or

(c) 2925.14 (drug paraphernalia); or

(2) A violation of an existing or former municipal ordinance or law of this state, any other state or the United States that is substantially equivalent to any of the offenses or violations described under paragraph (G)(1) of this rule.

(H) Certificates.

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

(1) A certificate of qualification for employment issued by a court of common pleas with competent jurisdiction pursuant to section 2953.25 of the Revised Code; or

(2) A certificate of achievement and employability in an HCBS-related field, issued by the Ohio department of rehabilitation and corections pursuant to section 2961.22 of the Revised Code.

(I) Pardons.

(1) A conviction of, or plea of guilty to, an offense as set forth in paragraph (B)(6) of rule 5101:3-45-07 of the Administrative Code shall not prevent a waiver agency from considering an applicant for employment or an employee for continued employment, if any of the following circumstances apply:

(a) The applicant or employee has been granted:

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

(ii) An unconditional pardon for the offense pursuant to an existing or former law of this state, any other state, or the United States, if the law is substantially equivalent to Chapter 2967. of the Revised Code; or

(iii) A conditional pardon for the offense pursuant to Chapter 2967. of the Revised Code, and the conditions under which the pardon was

granted have been satisfied.

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

(2) A conviction of, or plea of guilty to, an offense as set forth in paragraph (B)(5) of rule 5101:3-45-08 of the Administrative Code shall not prevent a consumer from choosing to receive services from an applicant or independent provider, if any of the following circumstances apply:

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

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

(ii) An unconditional pardon for the offense pursuant to an existing or former law of this state, any other state, or the United States, if the law is substantially equivalent to Chapter 2967. of the Revised Code; or

(iii) A conditional pardon for the offense pursuant to Chapter 2967. of the Revised Code, and the conditions under which the pardon was granted have been satisfied.

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

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