



## Ohio Administrative Code

### Rule 5160-43-09 Specialized recovery services program criminal records checks for providers.

Effective: October 15, 2021

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(A) This rule sets forth the process and requirements for the criminal records checks of providers of home and community-based services (HCBS) to individuals enrolled in the specialized recovery services program. HCBS include recovery management, peer recovery support and individualized placement and support-supported employment (IPS-SE). This rule only applies to all persons under final consideration for employment with an agency and existing employees in a full-time, part-time or temporary position who are providing HCBS and billing medicaid for these services.

(B) For the purposes of this rule:

(1) "Agency" means an entity certified by the Ohio department of mental health and addiction services under section 5119.36 of the Revised Code.

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

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

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

(a) A violation of one or more Revised Code section(s) set forth in the appendix to this rule;

(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 a violation of one of the sections set forth in the appendix to 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 paragraphs (B)(4)(a) and (B)(4)(b) of this rule.



(5) "Employ" means to hire a provider applicant to be an employee as defined in paragraph (B)(6) of this rule.

(6) "Employee" means a person employed by an agency in a full-time, part-time or temporary position, including conditional employment as described in paragraph (D)(4) of this rule, that involves providing HCBS including peer recovery support and IPS-SE when medicaid is billed for these services.

(7) "Provider applicant" means a person who is under final consideration for employment with an agency in a full-time, part-time or temporary position, when the position provides HCBS when medicaid is billed for these services.

(C) No agency shall employ a provider applicant or continue to employ an employee in a position that involves providing HCBS if the provider applicant or employee:

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

(a) The system for award management (SAM) maintained by the United States general services administration;

(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 42 U.S.C. part 1320a-7 (as in effect on January 1, 2021) and 42 U.S.C. part 1320c-5 (as in effect on January 1, 2021).

(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) 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 provider 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 agency.

(3) Except as provided for in paragraphs (F) and (G) of this rule, the provider 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 provider applicant's initial application for employment in a position that involves providing HCBS for an individual enrolled in the specialized recovery services program, the chief administrator of the agency shall conduct a review of the databases listed in paragraph (C)(1) of this rule to determine whether the agency is prohibited from employing the provider applicant in that position. The chief administrator of the agency shall provide the provider 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 an agency shall require each provider applicant to request that the BCII superintendent conduct a criminal records check with respect to the provider applicant, and pursuant to section 109.572 of the Revised Code. The provider applicant must provide a set of fingerprint impressions as part of the criminal records check.

(a) If a provider 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 provider applicant from the federal bureau of investigation (FBI) in a criminal records check, the chief administrator shall require the provider applicant to request that the superintendent obtain information from the FBI as part of the criminal records check.

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

(3) The chief administrator of an agency shall provide the following to each provider 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 provider applicant is to instruct the superintendent to submit the completed report of the criminal records check directly to the chief administrator of the agency.

(4) Conditional employment.

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

(b) The agency shall terminate conditional employment if the results of the criminal records check, 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 provider applicant has been convicted of, or has pleaded guilty to any of the disqualifying offenses set forth in paragraph (B)(4) of this rule, and regardless of the date of conviction or the date of entry of the guilty plea, then the agency shall either:

(a) Terminate his or her employment; or

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

(6) If the 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 employee makes any attempt to deceive the agency about his or her criminal record.

(8) An 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, an agency may require a provider applicant to pay to BCII the fee for a criminal records check for the applicant. If the agency pays the fee for a provider applicant, it may charge the provider applicant a fee not exceeding the amount the agency pays to BCII if the agency notifies the provider 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 their representative;

(b) The chief administrator of the agency that requires the provider applicant or employee to request



the criminal records check or the administrator's representative;

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

(d) An individual enrolled in the specialized recovery services program who receives, or may receive, HCBS from the person who is the subject of the criminal records check provided that the social security number, address and telephone number have been redacted from the record; and

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

(E) As a condition of continuing to employ an employee in a position that involves providing HCBS, the chief administrator of the agency shall follow the same process set forth in paragraphs (D)(1) to (D)(9) of this rule. The chief administrator:

(1) Shall conduct a criminal records check of an employee who does not currently have a criminal records check on file with the agency no later than ninety days after August 1, 2021;

(2) Shall conduct a criminal records check no later than thirty days after each employee anniversary date every five years;

(3) 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) An agency may choose to employ a provider 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)(4) of this rule when the provider applicant or employee has:

(1) Satisfied the conditions associated with the exclusionary periods set forth in paragraph (G) of this



rule; or

(2) 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, except when the provider applicant or employee has been convicted of or pleaded guilty to a tier I offense as described in paragraph (G)(1) of this rule; or

(3) 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, except when the provider applicant or employee has been convicted of or pleaded guilty to a tier I offense as described in paragraph (G)(1) of this rule; and

(4) Agreed, in writing, to have the agency inform each individual enrolled in the specialized recovery services program who may receive services from the provider applicant or employee of the disqualifying offense, and has acknowledged, in writing, that the individual has the right to select or reject to receive services from the provider applicant or employee, prior to commencing service delivery.

(G) An agency may employ a provider applicant or continue to employ an employee who has been convicted of or pleaded guilty to an offense listed in paragraph (B)(4) of this rule in a position providing HCBS to an individual enrolled in the specialized recovery services program pursuant to the following timeframes:

(1) Tier I, permanent exclusion.

(a) No agency shall employ a provider applicant or continue to employ an employee in a position that involves providing HCBS to an individual enrolled in the specialized recovery services program, when any of the following applies:

(i) The provider applicant or employee has been convicted of or pleaded guilty to any tier I offense as listed in the appendix to this rule; or

(ii) The provider applicant or employee has been convicted of or pleaded guilty to an offense in



section 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity) of the Revised Code in relation to any other tier I offense; or

(iii) The provider applicant or employee has 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 tier I offenses or violations as described in the appendix to this rule.

(b) Tier I permanent exclusion applies when the provider applicant or employee has 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 of the Revised Code (illegal use of supplemental nutrition assistance program (SNAP) or women, infants, and children (WIC) program benefits) and paragraph (G)(2) of this rule.

(2) Tier II, ten-year exclusionary period.

(a) No agency shall employ a provider applicant or continue to employ an employee in a position that provides HCBS to an individual enrolled in the specialized recovery services program for a period of ten years from the date the provider applicant or employee was fully discharged from all imprisonment, probation or parole, when the following applies:

(i) The provider applicant or employee has been convicted of or pleaded guilty to any tier II offense as listed in the appendix to this rule; or

(ii) The provider applicant or employee has been convicted of or pleaded guilty to an offense in section 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity) of the Revised Code in relation to any other tier II offense; or

(iii) The provider applicant or employee has 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 tier II offenses or violations as described in the appendix to this rule.

(b) If a provider applicant or employee has been convicted of multiple disqualifying offenses, including a tier II offense, and another tier II, tier III or tier IV offense or offenses, the provider





applicant or employee is subject to a fifteen-year exclusionary period beginning on the date the provider applicant or employee was fully discharged from all imprisonment, probation or parole for the most recent offense.

(3) Tier III, seven-year exclusionary period.

(a) No agency shall employ a provider applicant or continue to employ an employee in a position that provides HCBS to an individual enrolled in the specialized recovery services program for a period of seven years from the date the provider applicant or employee was fully discharged from all imprisonment, probation or parole, when the following applies:

(i) The provider applicant or employee has been convicted of or pleaded guilty to any tier III offense as listed in the appendix to this rule; or

(ii) The provider applicant or employee has been convicted of or pleaded guilty to an offense in section 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity) of the Revised Code in relation to any other tier III offense; or

(iii) The provider applicant or employee has 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 tier III offenses or violations as described in the appendix to this rule.

(b) If a provider applicant or employee has been convicted of multiple disqualifying offenses, including a tier III offense, and another tier III or tier IV offense or offenses, the provider applicant or employee is subject to a ten-year exclusionary period beginning on the date the provider applicant or employee was fully discharged from all imprisonment, probation or parole for the most recent offense.

(4) Tier IV, five-year exclusionary period.

(a) No agency shall employ a provider applicant or continue to employ an employee in a position that provides HCBS to an individual enrolled in the specialized recovery services program for a period of five years from the date the provider applicant or employee was fully discharged from all



imprisonment, probation or parole, when the following applies:

(i) The provider applicant or employee has been convicted of or pleaded guilty to any tier IV offense as listed in the appendix to this rule; or

(ii) The provider applicant or employee has been convicted of or pleaded guilty to an offense in section 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity) of the Revised Code in relation to any other tier IV offense;

(iii) The provider applicant or employee has 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 tier IV offenses or violations as described in the appendix to this rule.

(b) If a provider applicant or employee has been convicted of multiple disqualifying tier IV offenses, the provider applicant or employee is subject to a seven-year exclusionary period beginning on the date the provider applicant or employee was fully discharged from all imprisonment, probation or parole for the most recent offense.

(5) Tier V, no exclusionary period.

(a) An agency may employ a provider applicant or continue to employ an employee in in a position that provides HCBS to an individual enrolled in the specialized recovery services program if the provider applicant or employee has been convicted of or pleaded guilty to any tier V offense as listed in the appendix to this rule.

(b) No exclusionary period applies when the provider applicant or employee has 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 tier V offenses or violations as described in the appendix to this rule.

(H) Pardons.

(1) A conviction of, or a plea of guilty to an offense as set forth in paragraph (B)(4) of this rule shall



not prevent any agency from considering a provider applicant for employment or an employee for continued employment if the provider applicant or employee has been granted any of the following:

- (a) An unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code;
  - (b) 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; or
  - (c) 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.
- (2) A conviction of, or plea of guilty to an offense as set forth in paragraph (B)(4) of this rule shall not prevent any agency from considering a provider applicant for employment or an employee for continued employment if the provider applicant's or employee's conviction or guilty plea has been set aside pursuant to law.
- (I) Documentation of compliance. Each agency shall maintain a roster of provider applicants and employees, accessible by the ODM director or designee, which includes but is not limited to:
- (1) The name of each provider applicant and employee;
  - (2) The date the employee started work;
  - (3) The date the criminal records check request is submitted to BCII;
  - (4) The date the criminal records check is received by the agency; and
  - (5) A determination of whether the results of the check revealed that the provider applicant or employee committed a disqualifying offense(s).