



Ohio Administrative Code

Rule 5160-45-08 ODM-administered waiver programs: criminal records checks involving independent providers.

Effective: April 1, 2018

(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 Ohio department of medicaid (ODM)-administered waiver programs.

(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 5164.341 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 an ODM-administered waiver program.

(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 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, 2925.141, 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.

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

(6) "Home and community-based services medicaid waiver component" has the same meaning as in section 5166.01 of the Revised Code.

(7) "Independent provider" means a person who has a medicaid provider agreement to provide HCBS as an independent provider in an ODM-administered waiver program. The term "independent provider" is interchangeable with the term "non-agency provider" in Chapters 5160-46 and 5160-58 of the Administrative Code.

(8) "Retained applicant fingerprint database" or "RAPBACK" means the database maintained by the bureau of criminal investigation (BCI) pursuant to section 109.5721 of the Revised Code that contains the fingerprints of individuals on whom BCI has conducted criminal record checks to determine whether an applicant is ineligible for a medicaid provider agreement pursuant to this rule.

(9) "Superintendent" means superintendent of the BCI.

(C) ODM 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 any of the following applies:

(1) After the applicant is given the information and notification required by paragraphs (D)(6)(a), (D)(6)(b) and (D)(6)(c) of this rule, the applicant fails to do any of the following:

(a) Access, complete, and forward to the superintendent of BCI 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) Instruct the superintendent to submit the completed report of the criminal records check directly to ODM or its designee.

(2) Except as provided in paragraph (F) 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 ODM 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.

(3) The applicant or independent provider fails to comply with the provisions of this rule.

(D) Process for conducting criminal records checks.

(1) Each applicant, at the time of initial application for a medicaid provider agreement, shall provide a set of his or her fingerprints, and a criminal records check shall be conducted as a condition of ODM's approving the application.

(2) Each applicant and independent provider shall be subject to the database check requirements set forth in rule 5160-1-17.8 of the Administrative Code.

(3) If the 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, ODM or its designee shall request that the superintendent obtain a criminal records check from the FBI as part of the criminal records check.

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

(5) In order to maintain active provider status, each independent provider must have his or her fingerprints submitted to BCI to be maintained in RAPBACK. ODM shall pay BCI any reasonable fees associated with receiving notifications under division (D) of section 109.5721 of the Revised Code.

(6) ODM 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;

(b) Information about accessing, completing and forwarding to the superintendent the information required for RAPBACK pursuant to section 109.5721 of the Revised Code.

(c) 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 ODM or its designee.

(7) Each applicant and independent provider shall pay BCI 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 paragraphs (D)(1), (D)(3) and (D)(4) of this rule.

(8) Reports of any criminal records checks conducted by BCI 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 ODM and the staff of ODM involved in the administration of the Ohio medicaid program;
 - (c) ODM'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.
- (E) An individual 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 5160-45-11 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 5160-45-11 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 5160-45-11 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.