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JANUARY 2013

*Area Agency on Aging District 7, Inc.
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*Assistance. Advocacy. Answers on Aging.
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Criminal Background Check Rule Update

As many of you know, the Criminal Background Check rule has been revised and went into effect on January 1, 2013. The Utilization Management/Provider Operations Department provided a training on January 17, 2013. If you were unable to attend this training, please see the rules on the Ohio Department of Aging's website, <http://www.aging.ohio.gov/information/rules/current.aspx>.

Database Reviews and Criminal Records Checks

- 173-9-01 Introduction and definitions.
- 173-9-02 Applicability.
- 173-9-03 Free database reviews.
- 173-9-04 General requirements.
- 173-9-05 Conditional employment.
- 173-9-06 Disqualifying offenses.
- 173-9-07 Disqualifying offense exclusionary periods; limited grandfathering; certificates; pardons.
- 173-9-08 Records.
- 173-9-09 Immunity from negligent hiring.
- 173-9-10 Disciplinary actions.

The following pages are questions that were asked at the provider training with the response from the Ohio Department of Aging.

Also, there is an agency provider SAMPLE Background Check Roster for those who asked. If you would like it emailed to you please send a message to jsaunders@aaa7.org.

Also, any additional questions can be sent to Debbie Radekin, dradekin@aaa7.org or Janet Saunders, jsaunders@aaa7.org. Or call us at 1-800-582-7277.



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Additional Provider Questions from Training...

Assisted Living – Do ALL medical professions (hygienists, podiatrists, etc...) that enter the AL facility need CBC's and the 6 databases checked?

RESPONSE: The correct response depends on how a given residential care facility operates its business. ODA may not give residential care facilities legal advice on the best way to run their businesses in light of the new law. However, on behalf of ODA, I can explain a few facets of the law that may help:

- Section 173.394 of the Revised Code and Chapter 173-9 of the Administrative Code only apply to ODA programs, one of which is the Assisted Living Program. Not every resident of a residential care facility is in the Assisted Living Program. If facility #1 segregates direct-care staff so that Group A cares for consumers of the Assisted Living Program, while Group B cares for other consumers, facility #1 only is required to conduct database reviews and criminal records checks on Group A. If facility #2 uses all of its direct-care staff to help all of its residents, regardless of whether or not the resident is in the Assisted Living Program, then facility #2 is required to conduct database reviews and criminal records checks on its entire direct-care workforce.
- The Ohio Dept. of Health has adopted Chapter 3701-13 of the Administrative Code, which requires criminal records checks on all staff of nursing facilities and residential care facilities. That is a check in addition to that under Chapter 173-9 of the Administrative Code. Thus, (1) when the residential care facility conducts a criminal records check on its applicants and employees who provide direct-care to consumers of the Assisted Living Program, it will want to make certain that the employee is hireable under both sets of rules because both apply at once and (2) if an employee provides direct-care, but not to consumers of the Assisted Living Program, the employee is still subject to the requirements of Chapter 3701-13 of the Administrative Code.
- Section 173.394 of the Revised Code and Chapter 173-9 of the Administrative Code apply only to applicants under final consideration for employment and current employees, not to professionals who may enter a facility but are not employed by the facility.

What is the time-frame for current employees to have CBC back by? New hires have 60 days.

RESPONSE: I'll provide you with the standard responses ODA that posted on its FAQ page:

What is the deadline for completing criminal records checks on applicants?

The responsible entity may not hire an applicant until the completion of a criminal records check. However, rule 173-9-05 of the Administrative Code allows the responsible entity to conditionally hire the applicant, but only if (1) the responsible entity reviews the free databases and the databases do not disqualify the applicant, (2) the responsible entity hires the applicant on a conditional basis, (3) the responsible entity initiates the process of obtaining a criminal records check no later than five business days after the applicant begins employment, and (4) the applicant provides the responsible entity with a completed fingerprint impression sheet before the commencement of the applicant's conditional employment. If the applicant provides fingerprint impressions through WebCheck, the responsible entity would, in practice, be initiating the criminal records check process before the commencement of the applicant's conditional employment. The only requirement in new rule 173-9-05 of the Administrative Code regarding conditional hiring that did not appear in the previous rule is the requirement to review the free databases before conditionally hiring the applicant.

(continued on next page)

What is the deadline for completing criminal records checks on employees?

Rule 173-9-04 of the Administrative Code requires the responsible entity to conduct a criminal records check on employees no later than 30 days after every fifth anniversary date of hire for the employee (i.e., 5 years + 30 days). If the responsible entity hired an employee before 2008, the rule requires the responsible entity to conduct a criminal records check on the employee no later than 30 days after the anniversary date of hire in 2013. The rule does not prohibit a responsible entity from conducting a criminal records check before these deadlines nor does it require a provider to wait until a specified day to conduct a criminal records check. Instead, the rule requires completing a criminal records check before the deadlines the rule establishes. Also, division (D) of section 109.572 of the Revised Code says that the information that BCII lists on a criminal records report is good for one year. Therefore, if a responsible entity conducted a check of an employee in 2012, the responsible entity could use that information to review the employee according to the rules that take effect in 2013 so long as the responsibility entity does so before the employee's criminal records report expires.

Do current employees need 6 databases and CBC done? Yes. This is one of the questions answered in the Ohio Department of Aging FAQ's.

RESPONSE: Your answer is correct. Here's our response to the FAQ:

Do the rules require reviewing the six free databases before requesting a criminal records check on an existing *employee*?

Yes. Paragraph (A) of rule 173-9-03 and paragraph (A) of rule 173-9-04 of the Administrative Code require checking the six free databases before requesting any criminal records check required by Chapter 173-9 of the Administrative Code, which includes criminal records checks on applicants and employees.

If a person was hired in 2010, CBC not due until 2015... Provider knows of something on the employee's record from 2007. See Limited Grandfathering for Tier 4 offense. See Certificates or Pardons for Tier II, Tier III or Tier IV.

RESPONSE: Again, your answer heads in the right direction. If the provider conducts a criminal records check on a direct-care employee before the deadline for doing so—which, first of all, is absolutely fine—and the criminal records report reveals a disqualifying offense, the provider must terminate the employee unless one of the four exceptions listed in rule 173-9-07 of the Administrative Code makes it possible to work:

1. Exclusionary period ends: X years have passed since the applicant or employee was fully discharged from imprisonment, probation, or parole.
2. Limited grandfathering (ends on April 1, 2013)
3. Certificates. By the way, earlier today, ODA posted a link to the Ohio Dept. of Rehab. and Corrections' proposed new rule on these certificates on this ODA webpage.
4. Pardons.

Ohio Department of Aging Frequently Asked Questions to Criminal Record Checks can be found at <http://www.aging.ohio.gov/information/rules/faq.aspx>.

AAA7: BACKGROUND CHECK ROSTER - 2013

33CII - Bureau of Criminal Identification and Investigation (Ohio)

FBI - Federal Bureau of Investigation (Federal)

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ROUTE

Owner/CEO _____

Administrator _____

DON _____

Staff Development _____

Nurse Manager _____

Scheduler _____

Business manager _____

Other _____

Any agency changes must be reported to the AAA7 Quality Assurance department. This includes administrative staff, contact person for referrals, supervisory RN, agency location or mailing address, phone or fax numbers, as well as ownership changes. Written notification should be sent to Debbie Radekin, QA Dept., F-32 URG, P.O. Box 500, Rio Grande, Ohio 45674.

Seniors or caregivers who would like information about long term care options should be referred to The Area Agency on Aging District 7, Inc. at 1-800-582-7277.

***The Area Agency on Aging District 7, Inc.
serves Adams, Brown, Gallia, Highland,
Jackson, Lawrence, Pike, Ross, Scioto,
and Vinton Counties.***

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