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5122-30-31 Background investigations for employment.

- (A) The purpose of this rule is to establish procedure for conducting background investigations for owners, operators, prospective operators, managers, staff, volunteers, students, interns and other individuals employed by or seeking employment by a residential facility.
- (B) Definitions.
- (1) "Applicant" means a person who is under final consideration for employment with a residential facility.
 - (2) "Criminal records check" has the same meaning as is section 109.572 of the Revised Code.
 - (3) "Department" means the Ohio department of mental health and addiction services.
 - (4) "Disqualifying offense" means any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code.
 - (5) "Employee" means a person employed by a residential facility, a contract staff, or a person working as a volunteer, student or intern, regardless of whether the person is compensated. Contract worker does not include a person or company with whom the provider contracts to perform occasional maintenance such as lawn care, snow removal, painting, etc.
 - (6) "Individual" means a resident of a residential facility.
 - (7) "Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code.
 - (8) "Multiple disqualifying offenses" means two or more convictions or guilty pleas to disqualifying offenses. Convictions or guilty pleas resulting from or connected with the same act, or resulting from offenses committed at the same time, shall be counted as one conviction or guilty plea.
 - (9) "Residential facility" has the same meaning as found in section 5119.34 of the Revised Code.
- (C) Requirements for for residential facilities.
- (1) All requirements of this rule applicable to applicants shall also be applicable to owners, operators, managers, employees, and non-resident occupants. The residential facility will maintain a file for each owner, operator, manager and non-resident occupant containing the printed results of all requirements of this rule in the same manner as is specified in this rule for employees as defined in paragraph (B) of this rule.
 - (2) A residential facility shall:
 - (a) Require an applicant to complete an employment application and provide the names and addresses of present and former employers; and
 - (b) Attempt to obtain references from the applicant's present and former employers and maintain written evidence that reference checks were attempted and/or completed.
 - (3) A residential facility shall check each of the following databases to determine if the applicant is included:
 - (a) The list of excluded persons 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,

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94 Stat. 2619 (1980), 42 U.S.C. 1320a-7, and section 1156 of the Social Security Act, 96 Stat. 388 (1982), 42 U.S.C. 1320c-5 (available at <https://exclusions.oig.hhs.gov/>);

- (b) The abuser registry established pursuant to section 5123.52 of the Revised Code (available at https://its.prodapps.dodd.ohio.gov/abr_default.aspx);
- (c) The nurse aide registry established pursuant to section 3721.32 of the Revised Code (available at https://odhgateway.odh.ohio.gov/nar/nar_registry_search.aspx), and if there is a statement detailing finding by the director of the Ohio department of health that the applicant or employee neglected or abused a resident of a long-term care facility or residential care facility or misappropriated property of such a resident;
- (d) Conduct a search of the United States department of justice national public website (available at <https://nsopw.gov>);
- (e) The United States general services administration system for award management database (available at <https://www.sam.gov/>); and,
- (f) The database of incarcerated and supervised offenders established pursuant to section 5120.066 of the Revised Code (available at <https://appgateway.drc.ohio.gov/OffenderSearch>).

The residential facility will print the results of these database checks, which will be maintained in each employee's personnel files.

An eligible residential facility may use the Ohio department of medicaid automated registry check system in lieu of independently conducting the checks required by this paragraph, but is still required to conduct a separate search of the United States department of justice national public website <https://nsopw.gov>.

- (4) A child or adolescent serving residential facility will conduct for itself or request from the Ohio department of job and family services an alleged perpetrator of abuse and neglect report from the Ohio statewide automated child welfare information system (SACWIS). The process can be found at: <http://jfs.ohio.gov/ocf/childprotectivesevices.stm>. If the applicant does not present proof that they have lived in Ohio for the prior five years, the residential facility will also request a check of the child abuse and neglect registry of any other state a prospective employee has resided during the prior five years immediately prior to the date of application for employment. The process can be found at: <http://centerforchildwelfare.fmhi.usf.edu/ChildProtective/AdamWalsh.pdf>.

The residential facility will print the results of these checks, which will be maintained in each employee's personnel files.

- (5) A residential facility shall not employ an applicant or continue to employ an employee if the applicant or employee is included in one or more of the databases described in paragraph (C)(3) of this rule or if the alleged perpetrator results required in paragraph (C)(4) of this rule show a finding of substantiated abuse or neglect [within the past ten years](#).
- (6) A residential facility shall verify that an applicant has a valid motor vehicle operator's license and obtain a driving record prepared by the bureau of motor vehicles if the duties of the position for which the applicant has applied require the applicant to transport individuals or to operate the responsible entity's vehicles for any other purpose. A person having six or more points on his or her driving record is

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prohibited from transporting individuals.

(7) Prior to employing an applicant, a residential facility shall require an applicant to:

- (a) Submit a statement to the residential facility with the applicant's signature attesting that he or she has not been convicted of or pleaded guilty to a disqualifying offense. An applicant or employee shall disclose to the residential facility a conviction for any offense that has been sealed; and,
- (b) Sign an agreement under which the applicant agrees to notify the residential facility within fourteen calendar days if, while employed by the residential facility, the applicant is formally charged with, is convicted of, or pleads guilty to a disqualifying offense. The agreement shall provide that failure to make the notification may result in termination of the applicant's employment.

(8) A residential facility shall request the bureau of criminal investigation, or any other state or federal agency designated by the director, to conduct a criminal records check of an applicant. The residential facility will request that the reporting agency obtain information from the federal bureau of investigation as part of the criminal records check.

The residential facility will maintain written evidence of the results of the criminal records check, which will be maintained in each employee's personnel files.

(9) A residential facility shall, at a frequency of no less than once every four years, check the databases specified in paragraph (C)(3) of this rule, obtain an alleged perpetrator report specified in paragraph (C)(4) of this rule, and request the bureau of criminal investigation, or any other state or federal agency designated by the director, to conduct a criminal records check for each employee, owner, operator, manager, or non-resident occupant. The residential facility will request that the reporting agency obtain information from the federal bureau of investigation as part of the criminal records check.

A residential facility eligible to utilize the automated records check system (ARCS) will verify each employee's continued employment annually or at the frequency as specified by the Ohio department of medicaid in lieu of conducting checks of the databases specified in paragraph (C)(3) of this rule every four years after conducting the initial checks. The verification of continued employment will be printed and placed in each employee's personnel file. A provider using ARCs under the provisions of this paragraph is not required to conduct a separate search of the United States department of justice national public website <https://nsopw.gov> as long as the provider completed the required check prior to hire.

(D) Disqualifying offenses.

(1) There are five tiers of disqualifying offenses with corresponding time periods that preclude an applicant from being employed or an employee from remaining employed by a residential facility.

(a) Tier one: permanent exclusion.

No residential facility shall employ an applicant or continue to employ an employee if the applicant or employee has been convicted of or pleaded guilty to any of the following sections of the Revised Code:

(i) 2903.01 (aggravated murder);

(ii) 2903.02 (murder);

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- (iii) 2903.03 (voluntary manslaughter);
- (iv) 2903.11 (felonious assault);
- (v) 2903.15 (permitting child abuse);
- (vi) 2903.16 (failing to provide for a functionally impaired person);
- (vii) 2903.34 (patient abuse and neglect);
- (viii) 2903.341 (patient endangerment);
- (ix) 2905.01 (kidnapping);
- (x) 2905.02 (abduction);
- (xi) 2905.32 (human trafficking);
- (xii) 2905.33 (unlawful conduct with respect to documents);
- (xiii) 2907.02 (rape);
- (xiv) 2907.03 (sexual battery);
- (xv) 2907.04 (unlawful sexual conduct with a minor, formerly corruption of a minor);
- (xvi) 2907.05 (gross sexual imposition);
- (xvii) 2907.06 (sexual imposition);
- (xviii) 2907.07 (importuning);
- (xix) 2907.08 (voyeurism);
- (xx) 2907.12 (felonious sexual penetration);
- (xxi) 2907.31 (disseminating matter harmful to juveniles);
- (xxii) 2907.32 (pandering obscenity);
- (xxiii) 2907.321 (pandering obscenity involving a minor);
- (xxiv) 2907.322 (pandering sexually-oriented matter involving a minor);
- (xxv) 2907.323 (illegal use of minor in nudity-oriented material or performance);
- (xxvi) 2909.22 (soliciting/providing support for act of terrorism);
- (xxvii) 2909.23 (making terrorist threat);
- (xxviii) 2909.24 (terrorism);
- (xxix) 2913.40 (medicaid fraud);
- (xxx) 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity) when the underlying offense

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is any of the offenses or violations described in paragraphs (D)(1)(a)(i) to (D)(1)(a)(xxix) of this rule;

- (xxxix) 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 or women, infants, and children program benefits); or
- (xl) 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 (D)(1)(a)(i) to (D)(1)(a)(xxxix) of this rule.

(b) No residential facility shall employ an applicant or continue to employ an employee, if the applicant or employee has been convicted of an offense, where the victim of the offense was one of the following:

- (i) A person under eighteen years of age.
- (ii) A functionally impaired person as defined in section 2903.10 of the Revised Code.
- (iii) A mentally retarded person as defined in section 5123.01 of the Revised Code.
- (iv) A developmentally disabled person as defined in section 5123.01 of the Revised Code.
- (v) A person with a mental illness as defined in section 5122.01 of the Revised Code.
- (vi) A person sixty years of age or older.

(c) Tier two: ten-year exclusion.

No residential facility shall employ an applicant or continue to employ an employee, for a period of ten years from the date the applicant or employee was fully discharged from imprisonment, probation, and parole, if the applicant or employee has been convicted of or pleaded guilty to any of the following sections of the Revised Code:

- (i) 2903.04 (involuntary manslaughter);
- (ii) 2903.041 (reckless homicide);
- (iii) 2905.04 (child stealing) as it existed prior to July 1, 1996;
- (iv) 2905.05 (criminal child enticement);
- (v) 2905.11 (extortion);
- (vi) 2907.21 (compelling prostitution);
- (vii) 2907.22 (promoting prostitution);
- (viii) 2907.23 (enticement or solicitation to patronize a prostitute, procurement of a prostitute for another);
- (ix) 2909.02 (aggravated arson);

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- (x) 2909.03 (arson);
- (xi) 2911.01 (aggravated robbery);
- (xii) 2911.11 (aggravated burglary);
- (xiii) 2913.46 (illegal use of supplemental nutrition assistance program or women, infants, and children program benefits);
- (xiv) 2913.48 (worker's compensation fraud);
- (xv) 2913.49 (identity fraud);
- (xvi) 2917.02 (aggravated riot);
- (xvii) 2923.12 (carrying concealed weapon);
- (xviii) 2923.122 (illegal conveyance or possession of deadly weapon or dangerous ordnance in a school safety zone, illegal possession of an object indistinguishable from a firearm in a school safety zone);
- (xix) 2923.123 (illegal conveyance, possession, or control of deadly weapon or dangerous ordnance into courthouse);
- (xx) 2923.13 (having weapons while under disability);
- (xxi) 2923.161 (improperly discharging a firearm at or into a habitation or school);
- (xxii) 2923.162 (discharge of firearm on or near prohibited premises);
- (xxiii) 2923.21 (improperly furnishing firearms to minor);
- (xxiv) 2923.32 (engaging in pattern of corrupt activity);
- (xxv) 2923.42 (participating in criminal gang);
- (xxvi) 2925.02 (corrupting another with drugs);
- (xxvii) 2925.03 (trafficking in drugs);
- (xxviii) 2925.04 (illegal manufacture of drugs or cultivation of marihuana);
- (xxix) 2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs);
- (xxx) 3716.11 (placing harmful objects in food or confection);
- (xxxi) 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity) when the underlying offense is any of the offenses or violations described in paragraphs (D)(1)(c)(i) to (D)(1)(c)(xxx) of this rule; or
- (xxxii) 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 (D)(1)(c)(i) to (D)(1)(c)(xxx) of this rule.

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(d) Tier three: seven-year exclusion.

No residential facility shall employ an applicant or continue to employ an employee, for a period of seven years from the date the applicant, or employee was fully discharged from imprisonment, probation, and parole, if the applicant or employee has been convicted of or pleaded guilty to any of the following sections of the Revised Code:

- (i) 959.13 (cruelty to animals);
- (ii) 959.131 (prohibitions concerning companion animals);
- (iii) 2903.12 (aggravated assault);
- (iv) 2903.21 (aggravated menacing);
- (v) 2903.211 (menacing by stalking);
- (vi) 2905.12 (coercion);
- (vii) 2909.04 (disrupting public services);
- (viii) 2911.02 (robbery);
- (ix) 2911.12 (burglary);
- (x) 2913.47 (insurance fraud);
- (xi) 2917.01 (inciting to violence);
- (xii) 2917.03 (riot);
- (xiii) 2917.31 (inducing panic);
- (xiv) 2919.22 (endangering children);
- (xv) 2919.25 (domestic violence);
- (xvi) 2921.03 (intimidation);
- (xvii) 2921.11 (perjury);
- (xviii) 2921.13 (falsification, falsification in theft offense, falsification to purchase firearm, or falsification to obtain a concealed handgun license);
- (xix) 2921.34 (escape);
- (xx) 2921.35 (aiding escape or resistance to lawful authority);
- (xxi) 2921.36 (illegal conveyance of weapons, drugs, or other prohibited items onto grounds of detention facility or institution);
- (xxii) 2925.05 (funding of drug or marihuana trafficking);
- (xxiii) 2925.06 (illegal administration or distribution of anabolic steroids);

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(xxiv) 2925.24 (tampering with drugs);

(xxv) 2927.12 (ethnic intimidation);

(xxvi) 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity) when the underlying offense is any of the offenses or violations described in paragraphs (D)(1)(d)(i) to (D)(1)(d)(xxv) of this rule; or

(xxvii) 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 (D)(1)(d)(i) to (D)(1)(d)(xxvi) of this rule.

(e) Tier four: five-year exclusion.

No residential facility shall employ an applicant or continue to employ an employee, for a period of five years from the date the applicant or employee was fully discharged from imprisonment, probation, and parole, if the applicant or employee has been convicted or pleaded guilty to any of the following sections of the Revised Code:

(i) 2903.13 (assault);

(ii) 2903.22 (menacing);

(iii) 2907.09 (public indecency);

(iv) 2907.24 (soliciting after positive human immunodeficiency virus test);

(v) 2907.25 (prostitution);

(vi) 2907.33 (deception to obtain matter harmful to juveniles);

(vii) 2911.13 (breaking and entering);

(viii) 2913.02 (theft);

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

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

(xi) 2913.05 (telecommunications fraud);

(xii) 2913.11 (passing bad checks);

(xiii) 2913.21 (misuse of credit cards);

(xiv) 2913.31 (forgery, forging identification cards);

(xv) 2913.32 (criminal simulation);

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

(xvii) 2913.42 (tampering with records);

(xviii) 2913.43 (securing writings by deception);

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- (xix) 2913.44 (personating an officer);
- (xx) 2913.441 (unlawful display of law enforcement emblem);
- (xxi) 2913.45 (defrauding creditors);
- (xxii) 2913.51 (receiving stolen property);
- (xxiii) 2919.12 (unlawful abortion);
- (xxiv) 2919.121 (unlawful abortion upon minor);
- (xxv) 2919.123 (unlawful distribution of an abortion-inducing drug);
- (xxvi) 2919.23 (interference with custody);
- (xxvii) 2919.24 (contributing to unruliness or delinquency of child);
- (xxviii) 2921.12 (tampering with evidence);
- (xxix) 2921.21 (compounding a crime);
- (xxx) 2921.24 (disclosure of confidential information);
- (xxxi) 2921.32 (obstructing justice);
- (xxxii) 2921.321 (assaulting/harassing police dog or horse/service animal);
- (xxxiii) 2921.51 (impersonation of peace officer);
- (xxxiv) 2925.09 (illegal administration, dispensing, distribution, manufacture, possession, selling, or using any dangerous veterinary drug);
- (xxxv) 2925.11 (drug possession other than a minor drug possession offense);
- (xxxvi) 2925.13 (permitting drug abuse);
- (xxxvii) 2925.22 (deception to obtain dangerous drugs);
- (xxxviii) 2925.23 (illegal processing of drug documents);
- (xxxix) 2925.36 (illegal processing of drug samples);
- (xl) 2925.55 (unlawful purchase of pseudoephedrine product);
- (xli) 2925.56 (unlawful sale of pseudoephedrine product);
- (xlii) 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity) when the underlying offense is any of the offenses or violations described in paragraphs (D)(1)(e)(i) to (D)(1)(e)(xli) of this rule; or
- (xliii) 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 (D)(1)(e)(i) to (D)(1)(e)(xlii) of this rule.

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(xliv) Two or more OVI or OVUAC violations committed within the three years immediately preceding the submission of the application.

(f) Tier five: no exclusion.

A residential facility may employ an applicant or continue to employ an employee, if the applicant or employee has been convicted of or pleaded guilty to any of the following sections of the Revised Code:

(i) 2925.11 (drug possession that is minor drug possession offense);

(ii) 2925.14 (illegal use or possession of drug paraphernalia);

(iii) 2925.141 (illegal use or possession of marihuana drug paraphernalia); or

(iv) 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 (D)(1)(f)(i) to (D)(1)(f)(iii) of this rule.

(2) Multiple disqualifying offenses.

(a) If an applicant or employee has been convicted of or pleaded guilty to the following multiple disqualifying offenses, the applicant or employee is subject to a fifteen-year exclusion period:

(i) Two or more disqualifying offenses listed in paragraph (D)(1)(c) of this rule; or,

(ii) An offense listed in paragraph (D)(1)(c) and one or more offenses listed in paragraph (D)(1)(d) or paragraph (D)(1)(e) of this rule.

(b) If an applicant or employee has been convicted of or pleaded guilty to the following multiple disqualifying offenses, the applicant or employee is subject to a ten-year exclusion:

(i) Two or more disqualifying offenses listed in paragraph (D)(1)(d) of this rule; or,

(ii) An offense listed in paragraph (D)(1)(d) of this rule and one or more offenses listed in paragraph (D)(1)(e) of this rule.

(c) If an applicant or employee has been convicted of, or pleaded guilty to, two or more disqualifying offenses listed in paragraph (D)(1)(e) of this rule, the applicant or employee is subject to a seven-year exclusion:

(E) A conviction of or plea of guilty to a disqualifying offense listed or described in paragraph (D)(1) of this rule shall not preclude an applicant from being employed or an employee from remaining employed by a responsible entity under the following circumstances:

(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 this state, any other state, or the United States, if the law is substantially equivalent to Chapter 2967. of the Revised Code;

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- (3) The applicant's or employee's conviction or guilty plea has been overturned pursuant to law;
 - (4) The applicant or employee has been granted 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;
 - (5) The applicant's or employee's conviction or guilty plea is not for an offense listed or described in paragraph (D)(1)(a) of this rule and the applicant or employee has 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
 - (6) The applicant's or employee's conviction or guilty plea is not for an offense listed or described in paragraph (D)(1)(a) of this rule and the applicant or employee has a certificate of achievement and employability in a home and community-based services-related field, issued by the Ohio department of rehabilitation and correction pursuant to section 2961.22 of the Revised Code.
- (F) A residential facility may continue to employ a person who is excluded by paragraph (D)(1)(e) of this rule if the conviction for a tier four offense occurred prior to March 30, 2014, the employee was hired prior to the effective date of this rule, and if the residential facility has considered the nature and seriousness of the offense and attests in writing to the character and fitness of the person based on the person's demonstrated work performance. The residential facility shall have made this determination by June 30, 2014 and shall maintain the written attestation in the employee's personnel record. The determination shall be subject to review by the department.
- (G) Any report obtained pursuant to this rule is not a public record for purposes of section 149.43 of the Revised Code and shall not be made available to any person other than:
- (1) The applicant or employee who is the subject of the report or the applicant's, or employee's representative;
 - (2) The residential facility that requested the report or its representative;
 - (3) The department, if the department requests the residential facility to provide a copy of the report to the department;
 - (4) A court, hearing officer, or other necessary person involved in a case dealing with the denial of employment to the applicant or employee, or a civil or criminal action regarding the medicaid program or a program the department administers.
- (H) For purposes of this rule, reports from the bureau of criminal identification and investigation, or any other state or federal agency regarding a person's criminal record, and records supplied by the bureau of motor vehicles regarding a person's record of convictions for violations of motor vehicle laws are valid for a period of one year from the date of the report.
- (I) A residential facility shall ensure the safety of residents in any situation in which a non-employee is living in the facility.
- (J) If the residential facility contracts with any person (either directly or through another company) to perform occasional maintenance such as lawn care, snow removal, painting, etc. the residential facility will not allow the contract person to be left unsupervised with a child or adolescent resident unless the facility completes all of the requirements of this rule, regardless of whether the residential facility compensates the person for the services performed.

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- (K) The residential facility will maintain written documentation in the employee's personnel file of completing all of the required checks and reports described in this rule, and any other documentation necessary to demonstrate compliance. This includes printing the results of the database checks described in paragraph (C)(3) of this rule and all abuse and neglect perpetrator checks described in paragraph (C)(4) of this rule, and placing them in the personnel file, as well as placing a copy of the results of each BCI and FBI criminal records check in the file.
- (L) A residential facility that was not required to complete all of the checks described in this rule, will complete by December 31, 2020 each missing check for staff employed on the effective date of this rule.
- (M) A residential facility that was previously required to complete additional BCI, FBI and/or the database checks described in paragraph (C)(3) of this rule every five years, and it has been more than four years but less than five years since the most recent check, will assure that all additional checks are completed by December 31, 2020.