

June 10, 2019

This presentation explains:

- Who is required to have a background investigation
- Who is required to conduct background investigations
- Convictions that disqualify a person for employment
- Exclusionary Periods for Disqualifying Offenses
- Pre-hire requirements
- Post-hire requirements
- When a Responsible Entity may hire applicant/retain employee with a conviction that would otherwise be disqualifying

The requirements for background investigations for employment are found in Section <u>5123.081</u> of the Revised Code and administrative rule <u>5123-2-02</u>.

Who is required to have a background investigation?

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Applicant

- person under final consideration for appointment/ employment with the Ohio Department of Developmental Disabilities (DODD) or county board of developmental disabilities (county board)
- person transferred to DODD or county board
- employee recalled/reemployed by DODD or county board after a layoff
- person under final consideration for a direct services position with an agency provider or subcontractor (includes employee recalled or reemployed after a layoff)

Who is required to have a background investigation?

Candidate

- Chief Executive Officer of agency provider that applies for certification
- person who applies for certification as an independent provider

Who is required to have a background investigation?

Employee

- person appointed/employed by DODD or county board
- person employed in a direct services position by an agency provider or subcontractor

If you or your employees also serve persons enrolled in programs of the Ohio Department of Aging, the Ohio Department of Health, or the Ohio Department of Medicaid, you must carefully review the specific agency's rules to see which applicants and employees are required to have background investigations.

Who is required to conduct background investigations?

Who is required to conduct background investigations?

"Responsible Entity" means:

- DODD in the case of an applicant under final consideration for appointment to or employment with the department, being transferred to the department, or being recalled to or reemployed by the department after a layoff or a person appointed to or employed by the department;
- a county board in the case of an applicant under final consideration for appointment to or employment with the county board, being transferred to the county board, or being recalled to or reemployed by the county board after a layoff or a person appointed to or employed by the county board;
- an agency provider in the case of an applicant under final consideration for a direct services position with the agency provider or a person employed in a direct services position by the agency provider; or
- a subcontractor in the case of an applicant under final consideration for a direct services position with the subcontractor or a person employed in a direct services position by the subcontractor.

Who is required to conduct background investigations?

"Subcontractor" means a person who:

- has a subcontract with an agency provider to provide specialized services or a subcontract with another subcontractor to provide specialized services; and
- employs one or more persons in direct services positions.

Convictions that disqualify a person for employment

- list of Disqualifying Convictions
- o use of Exclusionary Periods

Disqualifying Offenses are listed in Section $\underline{109.572}$ (A)(3)(a) to (A)(3)(e) of the Revised Code.

Section 109.572 (B)(1) of the Revised Code requires the Bureau of Criminal Identification and Investigation (BCII) to release any sealed offenses.

Section 109.572 applies to Ohio Department of Developmental Disabilities, Ohio Department of Aging, Ohio Department of Health, and Ohio Department of Medicaid.

Disqualifying Offenses are divided into 5 tiers. Each tier has a corresponding Exclusionary Period:

Tier One Permanently excluded

Tier Two 10 years of exclusion

Tier Three 7 years of exclusion

Tier Four 5 years of exclusion

Tier Five 0 years of exclusion

View <u>Disqualifying Offenses by tier</u>.

What is an Exclusionary Period?

It is a period of time during which a person who has committed a specified offense is disqualified from being employed.

After an Exclusionary Period is over, a Responsible Entity is permitted to employ the person.

A person who has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for one or more Disqualifying Offenses in Tier One, Tier Two, Tier Three, or Tier Four is not eligible for hire or continued employment unless:

- s/he has been fully discharged from imprisonment, probation, and parole; and
- the exclusionary period is over.

Multiple Disqualifying Offenses result in a longer Exclusionary Period:

Disqualifying Offenses	Exclusionary Period
Tier Two, Tier Three, Tier Four	15-Year Exclusion
Tier Three, Tier Four	10-Year Exclusion
Tier Four	7-Year Exclusion

Pre-hire requirements:

- employment application
- databases to check
- driving record
- criminal records check

Pre-Hire: Employment Application

A Responsible Entity must:

- require applicant to complete employment application and provide names and addresses of present/former employers
- attempt to obtain references from applicant's previous/former employers and keep written evidence of reference checks attempted/ completed

Pre-Hire: Employment Application

A Responsible Entity must require an applicant to:

- attest* that he or she has not been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a Disqualifying Offense; and
- agree to notify the Responsible Entity within 14 days if he or she is formally charged with, is convicted of, pleads guilty to, or is found eligible for intervention in lieu of conviction for a Disqualifying Offense.

^{*} View Attestation Form available for use

A Responsible Entity must check 7 free databases to determine if applicant is included.

Databases should be checked prior to requesting a criminal records check because if applicant is ineligible for employment due to inclusion in one or more of the databases, there is no reason for the Responsible Entity to pay for a criminal records check.

Free databases that must be checked:

- 1. Office of Inspector General (OIG) List of Excluded Persons and Entities
- United States General Services
 Administration System for Award
 Management (SAM)

These databases contain names of people who have defrauded the federal government. For SAM, look to see if the word "Excluded" appears by the name of the applicant/employee, which means the person cannot be employed.

3. Abuser Registry

4. Nurse Aide Registry

This database contains names of nurse aides in good and bad standing with the Ohio Department of Health. Within this registry, look to see if there is a statement detailing findings by the Director that an applicant or employee neglected or abused a resident of a long-term care facility or residential care facility or misappropriated property of such resident.

Sex Offender and Child-Victim Offender Database

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6. Ohio Department of Medicaid Provider Exclusion and Suspension List

This database includes entities whose provider agreement is suspended due to a credible allegation of theft or fraud and/or an indictment for theft or fraud related to the Medicaid program.

7. Database of Incarcerated and Supervised Offenders

This database contains names of people who are in community correctional institutions.

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A Responsible Entity may not hire or continue to employ an applicant/employee whose name appears in:

- OIG List of Excluded Persons and Entities
- SAM <u>if</u> "Excluded" appears by the person's name
- Abuser Registry

A Responsible Entity may not hire or continue to employ an applicant/employee whose name appears in:

- Nurse Aide Registry <u>if</u> there is a statement detailing findings by the Director of the Ohio Department of Health that the person has neglected or abused an individual of a long-term care facility or residential facility or misappropriated property of such resident
- Sex Offender and Child-Victim Offender Database
- Ohio Department of Medicaid Provider Exclusion and Suspension List

Pre-Hire: Driving Record

A Responsible Entity must verify applicant has a valid operator's license and obtain applicant's driving record from the Bureau of Motor Vehicles (BMV) if position requires transporting individuals or operating the Responsible Entity's vehicles for any purpose.

A Responsible Entity may rely on the unofficial report from the BMV as long as the Responsible Entity maintains a copy of the report to document that the operator's license was verified and the driving record was checked.

A person with 6 or more points on his/her driving record is prohibited from transporting individuals.

Pre-Hire: Criminal Records Check

A Responsible Entity must request Bureau of Criminal Identification and Investigation (BCII) to conduct a criminal records check of applicant.

If applicant does not present proof of Ohio residency for past 5 years, the Responsible Entity must also request BCII to obtain information from the Federal Bureau of Investigation (FBI).

Conditional Employment

While waiting for the results of the criminal records check, a Responsible Entity may conditionally employ the applicant provided the applicant is not included in any of the databases.

Conditional employment is limited to 60 days.

Post-Hire: Enroll Employees in Rapback

Post-hire requirements:

Within 14 days of receiving criminal records check from BCII or the employee's start date (whichever is later), a Responsible Entity must enroll the employee in the Retained Applicant Fingerprint Database (called "Rapback"). Rapback will notify the Responsible Entity if the employee is charged with or convicted of a Disqualifying Offense.

Post-Hire: Check Databases

Post-hire requirements:

A Responsible Entity must check the 7 free databases at least once every 5 years for each employee in a direct services position.

To meet this requirement, a Responsible Entity may choose to enroll its employees in the free Automated Registry Check System (ARCS). ARCS notifies the employer of any registry findings that are recorded.

Post-Hire: Request FBI Check For Non-Residents

Post-hire requirements:

A Responsible Entity must obtain a criminal records check by FBI at least once every 5 years for an employee in a direct services position who cannot present proof of Ohio residency for the 5-year period.

When A Responsible Entity May Hire An Applicant/Retain An Employee With A Conviction That Would Otherwise Disqualify Him or Her For Employment

There are limited circumstances under which a Responsible Entity may hire an applicant or retain an employee with a Disqualifying Offense on his or her criminal record:

- 1. Exclusionary Period has passed; or
- 2. Certificate of Qualification for Employment

When A Responsible Entity May Hire An Applicant/Retain An Employee With A Conviction That Would Otherwise Disqualify Him or Her For Employment

Certificate of Qualification for Employment

Section 2953.25 of the Revised Code allows a Court of Common Pleas to issue a Certificate of Qualification for Employment (CQE). The CQE excuses the applicant/employee from the Exclusionary Period established for convictions listed in Tiers Two, Three, and Four of the background investigations rule. More information on CQEs is available at the website of the Ohio Department of Rehabilitation and Correction, www.drc.ohio.gov.

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Questions?

Contact the Office of System
Support and Standards
at (614) 466-6670
and ask to speak with a manager

