

Attachment Four
ELDERLY SERVICES PROGRAM
FREE DATABASE REVIEWS AND BCII CRIMINAL RECORDS
CHECK

1.1 The Provider shall conduct free database reviews and BCII criminal records check of all volunteers, applicants and existing employees providing direct care to ESP clients. Direct care is defined as any in-person contact with one or more clients who receive an ESP service or any access to an ESP client's personal property or personal records.

REQUIRED ELEMENTS:

- 1.2 The Provider shall review the following free databases before conducting the criminal records checks required under 2.0 for volunteers and applicants hired on or after August 1, 2013 and for all existing employees according to the schedule outlined under paragraph 2.0 and 2.02 of this condition.
- a SAM: The United States general services administration's system for award management, which is available at <https://sam.gov/content/home>;
 - b OIG: The office of inspector general of the United States department of health and human services' list of excluded individuals, which is available at <https://exclusions.oig.hhs.gov/>;
 - c Abuser registry: The department of developmental disabilities' registry of employees who cited for abuse, neglect, or misappropriation, which is available at https://its.prodapps.dodd.ohio.gov/ABR_Default.aspx;
 - d Medicaid: The department of Medicaid's online provider exclusion and suspension list, which is available at <https://medicaid.ohio.gov/provider/EnrollmentandSupport/ProviderExclusionandSuspensionList>;
 - e Sex offender search: The Ohio attorney general's sex offender and child-victim offender database, which is available at <http://www.icrimewatch.net/index.php?AgencyID=55149&disc=>;
 - f Offender search: The department of rehabilitation and correction's database of inmates, which is available at <https://appgateway.drc.ohio.gov/OffenderSearch>; and,
 - g Nurse aide registry: The department of health's state nurse aide registry, which is available at <https://nurseaideregistry.odh.ohio.gov/Public/PublicNurseAideSearch>.
- If the applicant or employee does not present proof that he or she has been a resident of Ohio for the five-year period immediately preceding the date of the database review, the provider shall conduct a database review of the nurse aide registry in the state or states in which the applicant or employee lived.

- 1.3 The Provider shall not utilize a volunteer, employ an applicant, or continue to employ an employee in a position that involves providing direct-care services to an ESP client if:
- a Any of the databases listed in paragraph 1.01 a through g of this condition list the volunteer, applicant, or employee; or
 - b The database listed in paragraph 1.01g of this condition lists the volunteer, applicant, or employee as an individual who neglected or abused a long-term care facility resident or residential care facility resident or misappropriated such a resident's property.
- 1.4 If the Provider's review of the free databases listed under paragraph 1.01 of this condition discloses disqualifying information about a volunteer, applicant, or employee, the Provider shall inform the individual of the disqualifying information.
- 1.5 Employment-service exemption: A Provider that provides direct-care services is not required to review the free databases listed under paragraph 1.01 of this condition if the applicant or employee was referred to the provider by an employment service that refers applicants to responsible entities to fill full-time, part-time, or temporary positions involving direct care and the employment services provides the Provider with a report of the results of the review of the free databases that shows that the applicant or employee is not disqualified from direct-care employment.

2.1 Criminal records check is required for the following:

ON WHOM IS A CRIMINAL RECORDS CHECK REQUIRED			
DIRECT CARE POSITION WITH ESP CLIENTS	APPLICANTS FOR EMPLOYMENT and VOLUNTEERS	CURRENT EMPLOYEES <i>5 YEAR RECHECK</i>	CURRENT VOLUNTEERS <i>5 YEAR RECHECK</i>
Only delivers home-delivered meals	Yes	No	No
Only has access to client personal records	Yes	No	No
Rural and County Transportation positions	Yes	No	No
Adult Day Service Volunteer under direct supervision	No	No	No
All other direct care	Yes	Yes	No

- 2.2 New applicants for paid positions and new volunteers:
- a The Provider shall conduct a BCII criminal records check on each applicant under final consideration for employment and on each individual applying to serve as a volunteer.
- 2.3 Current employees:
- At least once every five years: Except as provided for in paragraph 3.0 of this condition, the provider shall conduct a criminal records check on each employee who provides direct care at least once every five years according to one of the following three schedules:
- a Employees hired on or prior to 12/31/2008, should have had a BCII completed in 2013 and a recheck in 2018. Provider shall conduct a recheck no later than thirty days after the date of the last check and so on every five years.
(Example - BCII check on Sept. 1, 2013, recheck on Sept 7, 2018 next check due within 30 days of Sept 7, 2023, and so on.)
 - b **Employees hired January 1, 2009 and after:** If the Provider hired the employee on or after January 1, 2009, the Provider shall conduct a criminal records check of the employee no later than thirty days after the fifth anniversary of the employee's date of hire and no later than thirty days after each anniversary of the date of hire every five years after the first fifth-year anniversary of the date of hire.
(Example - if the Provider hired an employee on February 1, 2011, the Provider shall conduct a criminal records check on the employee no later than thirty days after February 1, 2016, no later than thirty days after February 1, 2021, and so on.)
 - c **More frequently than five years:** If the Provider conducts criminal records checks on an employee more frequently than every five years, the Provider is not responsible for conducting criminal records checks according to the five-year anniversaries of the employee's date of hire. If a responsible party complies with the requirements for rapback, the responsible party is conducting criminal records checks on a daily basis, which is a less-than-five-year schedule.
- 3.1 Exemptions: A Provider that provides direct-care services is not required to conduct the free database reviews or the BCII five year criminal records recheck on a direct-care employee if the only type of direct care that the individual provides is:
- a Delivering home-delivered meals;
 - b Having access to a client's personal records (e.g., an employee working in a Provider 's office who does not enter a client's home or an employee of a personal emergency response system's central monitoring station who does not enter a client's home);
 - c Under direction of a Rural or County Transit System; or,
 - d Providing services as a volunteer.

- 4.0 Reverification: If any person has requested a criminal records check of a volunteer, applicant, or employee in the past year, a provider may request a reverification of the criminal record from BCII. The reverification of a criminal records check has the same validity as a criminal records check.
- 5.1 Notification: The Provider shall inform each volunteer and applicant of the following at the time of initial application for a position to provide direct care (or referral to a Provider that provides direct-care services by an employment service):
- a Free database reviews: The Provider is required to review the free databases to determine if the Provider is prohibited from utilizing the volunteer or employing the applicant in a direct-care position.
 - b Criminal records checks: Unless the free database reviews reveal that the applicant or volunteer may not be employed or utilized in a direct-care position:
 - (i) The Provider is required to conduct a criminal records check to determine if the Provider is prohibited from utilizing the volunteer or employing the applicant in a direct care position; and,
 - (ii) The applicant is required to provide a set of the volunteer or applicant's fingerprint impressions as part of a criminal records check.
 - c Frequency: If the Provider utilizes the volunteer or employs the applicant, as a condition of continued employment, the provider shall conduct the free database reviews listed in 1.01 and shall request BCII criminal records checks to determine if the Provider is prohibited from employing the applicant in a direct-care position.
 - d Fees:
 - (i) If applicable, the fee required under paragraph 8.0 of this condition.
 - (ii) Any fees that are associated with obtaining fingerprint impressions.
- 6.0 FBI: If a volunteer, applicant, or employee does not furnish the Provider with evidence that he or she has been a resident of Ohio for the five-year period immediately preceding the date the Provider requests the criminal records check, or if the applicant does not provide the Provider with evidence that BCII has requested his or her criminal records from the FBI within that five- year period, the Provider shall request that BCII obtain information from the FBI as part of the criminal records check. Even if an applicant does furnish the Provider with evidence that he or she has been a resident of Ohio for the five-year period, the provider may request that BCII obtain information from the FBI as part of the criminal records check.
- 7.1 Forms and fingerprints:
- 7.2 The Provider shall provide each volunteer or applicant with the form and fingerprint impression sheet required to conduct a criminal records check, which may be tangible, electronic, or both tangible and electronic.
- a If the Provider requests that BCII include information from the FBI in the criminal records check report, the Provider shall also provide the volunteer or applicant with the form necessary to obtain the FBI's information; and,

- b The Provider shall forward the completed form(s) and fingerprint impression sheet to BCII for processing.

7.3 The BCII reason codes must ensure sealed records are included in the criminal records check.

8.1 Investigation fees:

8.2 The Provider shall pay BCII the fee prescribed for each criminal records check.

8.3 The Provider may charge a volunteer or applicant a fee so long as the fee does not exceed the amount the Provider pays to BCII, but only if:

- a The Provider notified the volunteer or applicant at the time of initial application of the amount of the fee and that, unless the fee was paid, the Provider would not consider the volunteer or applicant for employment; and,
- b The medical assistance program established under Chapter 5111 of the Revised Code does not reimburse the Provider for the fee.

8.4 The Provider may not charge an employee for the 5 year BCII recheck fee.

9.1 Employment-service exemption: A Provider that provides direct-care services is not required to request a criminal records check of an applicant or employee under paragraph 2.0 of this condition if the applicant or employee was referred to the Provider by an employment service that refers applicants to Providers to fill full-time, part-time, or temporary positions involving direct care and:

- a The employment service provides the Provider with a criminal records check report on the applicant or employee that was conducted no more than one year before the applicant's or employee's referral and the criminal records check report demonstrates that the applicant or employee was not convicted of a disqualifying offense; or, the report demonstrates that the applicant or employee was convicted of a disqualifying offense, but the Provider chooses to hire the applicant under paragraph 11.0 of this condition ; or,
- b The employment service or the applicant provides the Provider with a letter from the employment service, that is on the employment service's letterhead, that is dated and signed by a supervisor or another designated official of the employment service, and that states that the employment service has requested a criminal records check on the applicant, that the requested criminal records check will include a determination of whether the applicant has been convicted of a disqualifying offense, that, as of the date set forth on the letter, the employment service had not received the criminal records check report, and that, when the employment service receives the report, it promptly will send a copy of it to the Provider. If the Provider employs an applicant conditionally under this paragraph, it shall also comply with the requirements for conditional employment under paragraph 10.0 of this condition.

10.1 Conditional employment:

10.2 The Provider shall only utilize a volunteer or hire an applicant before obtaining a criminal records check report if:

- a The Provider reviewed the free databases, and the free database reviews do not disqualify the volunteer or applicant;
- b The Provider utilizes the volunteer or hires the applicant on a conditional basis;
- c The Provider initiates the process of obtaining a criminal records check no later than five business days after the volunteer or applicant begins conditional employment; and,
- d The volunteer or applicant furnishes the Provider with a completed fingerprint impression sheet before the commencement of the individual's conditional employment.

10.3 Removal of conditionally-hired volunteers and applicants:

- a The Provider shall remove the volunteer or applicant from providing direct care to any ESP client if the provider does not receive a criminal records check report from BCII within the period ending sixty days after the provider requested it from BCII; or,
- b Regardless of when the results of the criminal records check are obtained, if the results indicate that the volunteer or applicant was convicted of, plead guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, the Provider shall remove the volunteer or employee from providing direct services to any ESP client unless the Provider hires the applicant under the terms of Paragraphs 11.0 through 13.0 of this condition.

11.0 Disqualifying Offenses and exclusionary periods: Attachment B of the Conditions of Participation (this document) lists disqualifying offenses and required exclusionary periods. The Provider must refer to Attachment B to determine if the Provider may utilize a volunteer, employ or continue to employ an employee in a position involving providing direct care if that volunteer, applicant, or employee was convicted of or plead guilty to an offense listed in Attachment B of this document.

12.0 Certificates: Except for an individual with a disqualifying offense listed under Tier I of Attachment B of this document, a Provider may utilize a volunteer, hire an applicant, or continue to employ an employee who was issued either:

- a 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;
- b A Certificate of achievement and employability in a home and community-based service-related field, issued by the department of rehabilitation and corrections pursuant to section 2961.22 of the Revised Code.

- 13.1 Pardons: A conviction or a plea of guilty to an offense listed or described in Attachment B of this document shall not prevent an applicant's employment or utilization of a volunteer under any of the following circumstances:
- a The volunteer, applicant, or employee was granted an unconditional pardon for the offense pursuant to Chapter 2967 of the Revised Code;
 - b The volunteer, applicant, or employee was 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;
 - c The conviction or guilty plea was set aside pursuant to law; or
 - d The volunteer, applicant or employee was 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.

14.1 Records

14.2 Confidentiality: The Provider shall maintain the confidentiality of all criminal records check information, including information regarding disqualifying offenses. The Provider shall not make a report available to any person other than:

- a Appropriate staff within the Provider's agency;
- b The volunteer, applicant, or employee who is the subject of the criminal records check;
- c The staff of the Council on Aging and/or their designee.

14.3 Records retention: Personnel files:

- a What to retain: for each volunteer and employee the Provider shall retain the following records:
 - (i) A copy of the result of each free database review required under paragraph 1.01 of this condition.
 - (ii) The original copy of any criminal records report or the original copy of any reverified criminal records report.
 - (iii) official copy of a certificate of qualification for employment, if a court issued a certificate of qualification to the employee.
 - (iv) official copy of a certificate of achievement and employability, if the department of rehabilitation and corrections issued a certificate of achievement and employability to the employee.
 - (v)) An official copy of a pardon, if a governor pardoned the employee.
 - (vi) The date the Provider made a decision to utilize the volunteer or hired the employee.
- b Sealed files: To comply with paragraph 14.01 of this condition, the Provider shall retain the records required under paragraph 14.02a of this condition by sealing them within the personnel files or by retaining them in separate files from the personnel files.
- c Retain how long? The Provider shall retain the records and data identified in 14.02a during the entire term of their

Agreement with COA and for at least six (6) years after termination of the employee or volunteer.

- 15.1 Roster: The Provider shall maintain a roster of applicants, employees, and volunteers that includes, but is not limited to:
- a The name of each applicant, employee, or volunteer.
 - b The date the applicant, employee or volunteer started to work for the provider.
 - c The date the criminal records check and any recheck requests were submitted to BCII.
 - d The date the criminal records check(s) were received.
 - e A determination of whether the results of the check revealed that the applicant, employee or volunteer committed a disqualifying offense(s).
- 16.0 Records: The Provider, upon request, must make available to COA staff and or designee any records relating to free database reviews and BCII criminal records checks, including but not limited to personnel files and the roster.

CRIMINAL RECORDS CHECK TIER REFERENCES

Tier I: Permanent exclusion: No provider shall utilize a volunteer, employ an applicant or continue to employ an employee in a position involving providing direct care to an ESP client, if the individual was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code:

- 2903.11 Aggravated murder
- Murder
- Voluntary manslaughter
- 2903.11 Felonious assault
- Permitting child abuse
- Failing to provide for a functionally-impaired person
- 2903.34 Patient abuse or neglect
- 2903.341 Patient endangerment
- Kidnapping
- Abduction
- Human Trafficking
- Unlawful conduct with respect to documents
- Rape
- Sexual battery
- Unlawful sexual conduct with a minor, formerly corruption of a minor
- Gross sexual imposition
- Sexual imposition
- Importuning
- Voyeurism
- 2907.12 Felonious sexual penetration
- Disseminating matter harmful to juveniles
- Pandering obscenity
- Pandering obscenity involving a minor
- Pandering sexually-oriented matter involving a minor
- Illegal use of a minor in nudity-oriented material or performance
- Soliciting or providing support for an act of terrorism
- Making terroristic threats
- Terrorism
- 2913.40 Medicaid Fraud

If related to another offense of this rule, 2923.01(conspiracy), 2923.02 (attempt). Or 2923.03(complicity);

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 (illegal use of SNAP or WIC program benefits)

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 described above.

Tier II: Ten-Year exclusionary period: No provider shall utilize a volunteer, employ an applicant or continue to employ an employee in a position involving providing direct care to an ESP client for a period of ten years from the date the individual was fully discharged from all imprisonment, probation or parole; if the individual was convicted of, or plead guilty to, an offense in any of the following sections of the Revised Code:

- 2903.04 Involuntary manslaughter
- 2903.041 Reckless homicide
 - Child stealing, as it existed before July 1, 1996
 - Child enticement
- 2905.11 Extortion
 - Compelling prostitution
 - Promoting prostitution
 - Enticement or solicitation to patronize a prostitute; procurement of a prostitute for another
 - Aggravated arson
 - Arson
- 2911.01 Aggravated robbery
- 2911.11 Aggravated burglary
- 2913.46 Illegal use of SNAP or WIC program benefits
 - Worker's compensation fraud
 - Identity fraud
- 2917.02 Aggravated riot
- 2923.12 Carrying concealed weapons
 - 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
 - Illegal conveyance, possession, or control of deadly weapon or ordnance into a courthouse
- 2923.13 Having weapons while under disability
 - Improperly discharging a firearm at or into a habitation or school
 - Discharge of firearm on or near prohibited premises
- 2923.21 Improperly furnishing firearms to a minor
- 2923.32 Engaging in a pattern of corrupt activity
- 2923.42 Participating in a criminal gang
 - Corrupting another with drugs
 - Trafficking in drugs
 - Illegal manufacture of drugs or cultivation of marijuana
- 2925.041 Illegal assembly or possession of chemicals for the manufacture of drugs
- 3716.11 Placing harmful or hazardous objects in food or confection

If related to another offense under paragraph of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity);

Or, a violation of an existing or former municipal ordinance or law of this state, any other state, or United States that is substantially equivalent to any of the Tier II offenses or violations described above.

If a volunteer, applicant, or employee was convicted of multiple disqualifying offenses, including an offense listed under Tier II, and another offense or offenses listed in under Tier II, Tier III and Tier IV of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act, the individual is subject to a fifteen-year exclusionary period.

Tier III: Seven-Year exclusionary period: No provider shall utilize a volunteer, employ an applicant, or continue to employ an employee in a position involving providing direct care to an ESP client for a period of seven years from the date the individual was fully discharged from all imprisonment, probation or parole; if the individual was convicted of, or plead guilty to, an offense in any of the following sections of the Revised Code:

- 959.13 Cruelty to animals
- 959.131 Prohibitions concerning companion animals
- 2903.12 Aggravated assault
- 2903.21 Aggravated assault
- 2903.211 Menacing by stalking
- 2905.12 Coercion
- 2909.04 Disrupting public services
- 2911.02 Robbery
- 2911.12 Burglary
- 2913.47 Insurance Fraud
- 2917.01 Inciting to violence
- 2917.03 Riot
- 2917.31 Inducing panic
- 2919.22 Endangering children
- 2919.25 Domestic violence
- 2921.03 Riot
- 2921.11 Perjury
- 2921.13 Falsification, falsification in a theft offense, falsification to purchase a firearm, or falsification to obtain a concealed handgun license
- Escape
- Aiding escape or resistance to lawful authority
- Illegal conveyance of weapons, drugs, or other prohibited items onto the grounds of a detention facility or institution
- Funding drug trafficking
- Illegal administration of distribution of anabolic steroids
- 2925.24 Tampering with drugs
- 2927.12 Ethnic intimidation

If related to another offense under paragraph of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); Or, a violation of an existing or former municipal ordinance or law of this state, any other state, or United States that is substantially equivalent to any of the Tier III offenses or violations described above.

If a volunteer, applicant, or employee was convicted of multiple disqualifying offenses, including an offense listed under Tier III, and another offense or offenses listed in under Tier III and Tier IV of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act, the individual is subject to a ten-year exclusionary period.

Tier IV: Five-Year exclusionary period: No provider shall utilize a volunteer, employ an applicant, or continue to employ an employee in a position involving providing direct care to an ESP client for a period of five years from the date the individual was fully discharged from all imprisonment, probation or parole; if the individual was convicted of, or plead guilty to, an offense in any of the following sections of the Revised Code:

- 2903.13 Assault
- 2903.22 Menacing
- 2907.09 Public indecency
 - Soliciting, engaging in solicitation after a positive HIV test
 - Prostitution
- 2907.33 Deception to obtain matter harmful to juveniles
- 2911.13 Breaking and entering
 - Theft
 - Unauthorized use of a vehicle
 - Unauthorized use of computer, cable, or telecommunication property
 - Telecommunications fraud
- 2913.11 Passing bad checks
- 2913.21 Misuse of credit cards
 - Forgery, forging identification cards
 - Criminal simulation
 - Defrauding a rental agency or hostelry
 - Tampering with records
 - Securing writings by deception
 - Personating an officer
- 2913.441 Unlawful display of law enforcement emblem
- 2913.45 Defrauding creditors
- 2913.51 Receiving stolen property
- 2919.12 Unlawful abortion
- 2919.121 Unlawful abortion upon minor
- 2919.123 Unlawful distribution of an abortion-inducing drug
 - Interference with custody
 - Contributing to the unruliness or delinquency of a child
- 2921.12 Tampering with evidence
- 2921.21 Compounding a crime
- 2921.24 Disclosure of confidential information
- 2921.32 Obstructing justice
- 2921.321 Assaulting or harassing a police dog, horse, or service animal

- 2921.51 Impersonation of peace officer
- 2925.09 Illegal administration, dispensing, distribution, manufacture, possession, selling, or using any dangerous veterinary drug
- 2925.11 Drug possession, unless a minor drug possession offense
- 2925.13 Permitting drug above
 - Deception to obtain a dangerous drug
 - Illegal processing of drug documents
- 2925.36 Illegal dispensing of drug samples
 - Unlawful purchase of a pseudoephedrine product, underage purchase of a pseudoephedrine product, using false information to purchase a pseudoephedrine product, improper purchase of a pseudoephedrine product
 - Unlawfully selling a pseudoephedrine product unlawfully selling a pseudoephedrine product to a minor; improper sale of a pseudoephedrine product);

If related to another offense under paragraph of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity);

Or, 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 described above.

If a volunteer, applicant, or employee was convicted of multiple disqualifying offenses, including an offense listed under Tier IV, and another offense or offenses listed in under Tier IV of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act, the individual is subject to a seven-year exclusionary period.

Tier V: No exclusionary period: A provider may utilize a volunteer, employ an applicant, or continue to employ an employee involving providing direct care to an ESP client if the individual was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code:

- 2925.11 Drug possession, but only if a minor drug possession offense
- 2925.14 Illegal use, possession, dealing, selling, or advertising of drug paraphernalia
- 2925.141 Illegal use or possession of marijuana drug paraphernalia

Or, 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 described above.