



Ohio Revised Code

Section 5164.341 Criminal records check by independent provider.

Effective: October 3, 2023

Legislation: House Bill 33

(A) As used in this section:

"Anniversary date" means the effective date of the provider agreement relating to the independent provider.

"Applicant" means a person who has applied for a provider agreement to provide home and community-based services as an independent provider under a home and community-based medicaid waiver component administered by the department of medicaid.

"Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

"Disqualifying offense" means any of the offenses listed or described in divisions (A)(3)(a) to (e) of section 109.572 of the Revised Code.

"Independent provider" means a person who has a provider agreement to provide home and community-based services as an independent provider in a home and community-based services medicaid waiver component administered by the department of medicaid. "Independent provider" does not include a person who is employed by an individual enrolled in a participant-directed waiver administered by the department of medicaid.

(B) The department of medicaid or the department's designee shall deny an applicant's application for a provider agreement and shall terminate an independent provider's provider agreement if either of the following applies:

(1) After the applicant or independent provider is given the information and notification required by divisions (D)(2)(a) and (b) of this section, the applicant or independent provider fails to do either of the following:



(a) Access, complete, or forward to the superintendent of the bureau of criminal identification and investigation 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 required by this section directly to the department or the department's designee.

(2) Except as provided in rules authorized by this section, the applicant or independent provider is found by either of the following to have been convicted of or have pleaded guilty to a disqualifying offense, regardless of the date of the conviction or the date of entry of the guilty plea:

(a) A criminal records check required by this section;

(b) In the case of an independent provider, a notice provided by the bureau of criminal identification and investigation under division (D) of section 109.5721 of the Revised Code.

(C)(1) The department or the department's designee shall inform each applicant, at the time of initial application for a provider agreement, that the applicant is required to provide a set of the applicant's fingerprint impressions and that a criminal records check is required to be conducted as a condition of the department's approving the application.

(2) Unless the department elects to receive notices about independent providers from the bureau of criminal identification and investigation pursuant to division (D) of section 109.5721 of the Revised Code, the department or the department's designee shall inform each independent provider on or before the time of the anniversary date of the provider agreement that the independent provider is required to provide a set of the independent provider's fingerprint impressions and that a criminal records check is required to be conducted.

(D)(1) The department or the department's designee shall require an applicant to complete a criminal records check prior to entering into a provider agreement with the applicant. The department or the department's designee shall require an independent provider to complete a criminal records check at least annually unless the department elects to receive notices about independent providers from the bureau of criminal identification and investigation pursuant to division (D) of section 109.5721 of



the Revised Code. If an applicant or independent provider for whom a criminal records check is required by this section does not present proof of having been a resident of this state 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 of the bureau of criminal identification and investigation has requested information about the applicant or independent provider from the federal bureau of investigation in a criminal records check, the department or the department's designee shall request that the applicant or independent provider obtain through the superintendent a criminal records request from the federal bureau of investigation as part of the criminal records check of the applicant or independent provider. Even if an applicant or independent provider for whom a criminal records check request is required by this section presents proof of having been a resident of this state for the five-year period, the department or the department's designee may request that the applicant or independent provider obtain information through the superintendent from the federal bureau of investigation in the criminal records check.

(2) The department or the department's designee shall provide the following to each applicant and independent provider for whom a criminal records check is required by this section:

(a) Information about accessing, completing, and forwarding to the superintendent of the bureau of criminal identification and investigation the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and the standard impression sheet prescribed pursuant to division (C)(2) of that section;

(b) 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 the department or the department's designee.

(3) Each applicant and independent provider for whom a criminal records check is required by this section shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of section 109.572 of the Revised Code for the criminal records check conducted of the applicant or independent provider.

(E) Neither the report of any criminal records check conducted by the bureau of criminal identification and investigation in accordance with section 109.572 of the Revised Code and



pursuant to a request made under this section nor a notice provided by the bureau under division (D) of section 109.5721 of the Revised Code is a public record for the purposes of section 149.43 of the Revised Code. Such a report or notice shall not be made available to any person other than the following:

- (1) The person who is the subject of the criminal records check or the person's representative;
- (2) The medicaid director and the staff of the department who are involved in the administration of the medicaid program;
- (3) The department's designee;
- (4) An individual receiving or deciding whether to receive home and community-based services from the person who is the subject of the criminal records check or notice from the bureau;
- (5) A court, hearing officer, or other necessary individual involved in a case or administrative hearing dealing with either of the following:
 - (a) A denial, suspension, or termination of a provider agreement, including when related to the criminal records check or notice from the bureau;
 - (b) A civil or criminal action regarding the medicaid program.

With respect to an administrative hearing dealing with the denial, suspension, or termination of a provider agreement, the report of a criminal records check may be introduced as evidence at the hearing and if admitted, becomes part of the hearing record. Any such report shall be admitted only under seal and shall maintain its status as not a public record.

(F) The medicaid director shall adopt rules under section 5164.02 of the Revised Code to implement this section. The rules shall specify circumstances under which the department or the department's designee may either approve an applicant's application or allow an independent provider to maintain an existing provider agreement even though the applicant or independent provider is found by either of the following to have been convicted of or have pleaded guilty to a disqualifying offense:



- (1) A criminal records check required by this section;

- (2) In the case of an independent provider, a notice provided by the bureau of criminal identification and investigation under division (D) of section 109.5721 of the Revised Code.