



## Ohio Revised Code

### Section 173.381 Permissible actions based on criminal records check.

Effective: October 12, 2016

Legislation: House Bill 158 - 131st General Assembly

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(A) As used in this section:

(1) "Community-based long-term care services" means community-based long-term care services, as defined in section 173.14 of the Revised Code, that are provided under a program the department of aging administers.

(2) "Community-based long-term care services certificate" means a certificate issued under section 173.391 of the Revised Code.

(3) "Community-based long-term care services contract or grant" means a contract or grant awarded under section 173.392 of the Revised Code.

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

(5) "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.

(6) "Provider" has the same meaning as in section 173.39 of the Revised Code.

(7) "Self-employed provider" means a provider who works for the provider's self and has no employees.

(B) This section does not apply to any individual who is subject to a database review or criminal records check under section 3701.881 of the Revised Code.

(C)(1) The department of aging or its designee shall take the following actions when the circumstances specified in division (C)(2) of this section apply:



- (a) Refuse to issue a community-based long-term care services certificate to a self-employed provider;
  - (b) Revoke a self-employed provider's community-based long-term care services certificate;
  - (c) Refuse to award a community-based long-term care services contract or grant to a self-employed provider;
  - (d) Terminate a self-employed provider's community-based long-term care services contract or grant awarded on or after September 15, 2014.
- (2) The following are the circumstances that require the department of aging or its designee to take action under division (C)(1) of this section:
- (a) A review of the databases listed in division (E) of this section reveals any of the following:
    - (i) That the self-employed provider is included in one or more of the databases listed in divisions (E)(1) to (5) of this section;
    - (ii) That there is in the state nurse aide registry established under section 3721.32 of the Revised Code a statement detailing findings by the director of health that the self-employed provider neglected or abused a long-term care facility or residential care facility resident or misappropriated property of such a resident;
    - (iii) That the self-employed provider is included in one or more of the databases, if any, specified in rules adopted under this section and the rules require the department or its designee to take action under division (C)(1) of this section if a self-employed provider is included in such a database.
  - (b) After the self-employed provider is provided, pursuant to division (F)(2)(a) of this section, a copy of 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, the self-employed provider fails to complete the form or provide the self-employed provider's fingerprint impressions on the standard impression sheet.



(c) Unless the self-employed provider meets standards specified in rules adopted under this section, the self-employed provider is found by a criminal records check required by this section to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

(D) The department of aging or its designee shall inform each self-employed provider of both of the following at the time of the self-employed provider's initial application for a community-based long-term care services certificate or initial bid for a community-based long-term care services contract or grant:

(1) That a review of the databases listed in division (E) of this section will be conducted to determine whether the department or its designee is required by division (C) of this section to refuse to issue or award a community-based long-term care services certificate or community-based long-term care services contract or grant to the self-employed provider;

(2) That, unless the database review reveals that the department or its designee is required to refuse to issue or award a community-based long-term care services certificate or community-based long-term care services contract or grant to the self-employed provider, a criminal records check of the self-employed provider will be conducted and the self-employed provider is required to provide a set of the self-employed provider's fingerprint impressions as part of the criminal records check.

(E) As a condition of issuing or awarding a community-based long-term care services certificate or community-based long-term care services contract or grant to a self-employed provider, the department of aging or its designee shall conduct a database review of the self-employed provider in accordance with rules adopted under this section. If rules adopted under this section so require, the department or its designee shall conduct a database review of a self-employed provider in accordance with the rules as a condition of not revoking or terminating the self-employed provider's community-based long-term care services certificate or community-based long-term care services contract or grant. A database review shall determine whether the self-employed provider is included in any of the following:

(1) The excluded parties list system that is maintained by the United States general services



administration pursuant to subpart 9.4 of the federal acquisition regulation and available at the federal web site known as the system for award management;

(2) The list of excluded individuals and entities maintained by the office of inspector general in the United States department of health and human services pursuant to the "Social Security Act," 42 U.S.C. 1320a-7 and 1320c-5;

(3) The registry of developmental disabilities employees established under section 5123.52 of the Revised Code;

(4) The internet-based sex offender and child-victim offender database established under division (A)(11) of section 2950.13 of the Revised Code;

(5) The internet-based database of inmates established under section 5120.66 of the Revised Code;

(6) The state nurse aide registry established under section 3721.32 of the Revised Code;

(7) Any other database, if any, specified in rules adopted under this section.

(F)(1) As a condition of issuing or awarding a community-based long-term care services certificate or community-based long-term care services contract or grant to a self-employed provider, the department of aging or its designee shall request that the superintendent of the bureau of criminal identification and investigation conduct a criminal records check of the self-employed provider. If rules adopted under this section so require, the department or its designee shall request that the superintendent conduct a criminal records check of a self-employed provider at times specified in the rules as a condition of not revoking or terminating the self-employed provider's community-based long-term care services certificate or community-based long-term care services contract or grant. However, the department or its designee is not required to request the criminal records check of the self-employed provider if the department or its designee, because of circumstances specified in division (C)(2)(a) of this section, is required to refuse to issue or award a community-based long-term care services certificate or community-based long-term care services contract or grant to the self-employed provider or to revoke or terminate the self-employed provider's certificate or contract or grant.



If a self-employed provider for whom a criminal records check request 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 has requested information about the self-employed provider from the federal bureau of investigation in a criminal records check, the department or its designee shall request that the superintendent obtain information from the federal bureau of investigation as part of the criminal records check. Even if a self-employed 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 its designee may request that the superintendent include information from the federal bureau of investigation in the criminal records check.

(2) The department or its designee shall do all of the following:

(a) Provide to each self-employed provider for whom a criminal records check request is required by this section a copy of the form prescribed pursuant to division (C)(1) of section 109.572 of the Revised Code and a standard impression sheet prescribed pursuant to division (C)(2) of that section;

(b) Obtain the completed form and standard impression sheet from the self-employed provider;

(c) Forward the completed form and standard impression sheet to the superintendent.

(3) The department or its designee 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 each criminal records check of a self-employed provider the department or its designee requests under this section. The department or its designee may charge the self-employed provider a fee that does not exceed the amount the department or its designee pays to the bureau.

(G) The report of any criminal records check of a self-employed provider conducted pursuant to a request made under this section is not a public record for the purposes of section 149.43 of the Revised Code and shall not be made available to any person other than the following:

(1) The self-employed provider or the self-employed provider's representative;



- (2) The department of aging, the department's designee, or a representative of the department or its designee;
- (3) The medicaid director and the staff of the department of medicaid who are involved in the administration of the medicaid program if the self-employed provider is to provide, or provides, community-based long-term care services under a component of the medicaid program that the department of aging administers;
- (4) A court, hearing officer, or other necessary individual involved in a case dealing with any of the following:
- (a) A refusal to issue or award a community-based long-term services certificate or community-based long-term care services contract or grant to the self-employed provider;
  - (b) A revocation or termination of the self-employed provider's community-based long-term care services certificate or community-based long-term care services contract or grant;
  - (c) A civil or criminal action regarding a program the department of aging administers.
- (H) In a tort or other civil action for damages that is brought as the result of an injury, death, or loss to person or property caused by a self-employed provider, both of the following shall apply:
- (1) If the department of aging or its designee, in good faith and reasonable reliance on the report of a criminal records check requested under this section, issued or awarded a community-based long-term care services certificate or community-based long-term care services contract or grant to the self-employed provider or did not revoke or terminate the self-employed provider's certificate or contract or grant, the department and its designee shall not be found negligent solely because of its reliance on the report, even if the information in the report is determined later to have been incomplete or inaccurate.
  - (2) If the department or its designee in good faith issued or awarded a community-based long-term care services certificate or community-based long-term care services contract or grant to the self-



employed provider or did not revoke or terminate the self-employed provider's certificate or contract or grant because the self-employed provider meets standards specified in rules adopted under this section, the department and its designee shall not be found negligent solely because the self-employed provider has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

(I) The director of aging shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section.

(1) The rules may do the following:

(a) Require self-employed providers who have been issued or awarded community-based long-term care services certificates or community-based long-term care services contracts or grants to undergo database reviews and criminal records checks under this section;

(b) If the rules require self-employed providers who have been issued or awarded community-based long-term care services certificates or community-based long-term care services contracts or grants to undergo database reviews and criminal records checks under this section, exempt one or more classes of such self-employed providers from the requirements;

(c) For the purpose of division (E)(7) of this section, specify other databases that are to be checked as part of a database review conducted under this section.

(2) The rules shall specify all of the following:

(a) The procedures for conducting database reviews under this section;

(b) If the rules require self-employed providers who have been issued or awarded community-based long-term care services certificates or community-based long-term care services contracts or grants to undergo database reviews and criminal records checks under this section, the times at which the database reviews and criminal records checks are to be conducted;

(c) If the rules specify other databases to be checked as part of the database reviews, the



circumstances under which the department of aging or its designee is required to refuse to issue or award a community-based long-term care services certificate or community-based long-term care services contract or grant to a self-employed provider or to revoke or terminate a self-employed provider's certificate or contract or grant when the self-employed provider is found by a database review to be included in one or more of those databases;

(d) Standards that a self-employed provider must meet for the department or its designee to be permitted to issue or award a community-based long-term care services certificate or community-based long-term care services contract or grant to the self-employed provider or not to revoke or terminate the self-employed provider's certificate or contract or grant if the self-employed provider is found by a criminal records check required by this section to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.