

## HCBS Criminal Records Checks' Rules Overview

### Process Leading to the Criminal Record Check Rules Changes

- The development of policy to address gaps and inconsistencies in the criminal background checks' rules governing home and community based services has been a cooperative effort involving the Office of Ohio Attorney General Mike DeWine (AGO), the Governor's Office of Health Transformation (OHT), the Office of Budget and Management (OBM), the Office of Medical Assistance (OMA), the Ohio Department of Health (ODH), the Ohio Department of Aging (ODA), the Ohio Department of Developmental Disabilities (DODD), and the Ohio Department of Rehabilitation and Correction (ODRC).
- The AGO Medicaid Fraud Section had increasing concerns related to gaps and inconsistencies in the criminal background checks' rules applicable to home and community based services. Attorney General Mike DeWine issued a letter to the State human services agency directors in December, 2011, which included the following concerns:
  - Gaps in certain rules based on age of the recipient—elders and minors not covered;
  - Crimes of attempt not covered in certain rules;
  - Subjective and arbitrary rehabilitation standards;
  - Single theft offenses not covered;
  - No post-hiring background checks required for a number of programs; and
  - Background checks not occurring for out-of-state and federal convictions.
- OHT convened a team made up of OMA, ODH, ODA, and DODD staff to address the issues raised by the Attorney General. AGO, OBM, and ODRC staff provided advice and consultation. The team was referred to as the Prior Criminal Convictions Work Team.
- Working with the Legislative Service Commission, the Work Team developed draft legislation to address the issues raised by the Attorney General and to make criminal background checks' rules for home and community based services uniform across

the responsible state agencies. These legislative provisions were included the mid-biennium review legislation, HB 487, introduced in March, 2012, and which passed as ASHB 487 in June, 2012.

- The Revised Code changes resulting from the legislation, and the subsequent Administrative Code rules which will go into effect in January 1, 2013, are applicable across OMA, ODH, ODA, and DODD. The rules govern criminal record checks for agencies and independent providers of Medicaid state plan, home and community-based waiver, and other home care services in the state of Ohio.

### **Key Provisions of Law and Rules**

- The law and Administrative Code rule changes include these basic provisions for criminal background checks:
  - Establishes a required review of various free databases for disqualifying information regarding an applicant or employee prior to conducting a criminal record check of an applicant or employee.
  - Exempts from database reviews and criminal record checks those individuals who are subject to criminal record check requirements in accordance with section 3701.881 or section 173.394 of the Revised Code.
  - Establishes a uniform list of disqualifying offenses against which OMA, ODH, ODA and DODD will conduct criminal record checks.
  - Phases-in required criminal records re-check every five years. Employees hired prior to January 1, 2008 must be rechecked within 30 days of the anniversary of their date of hire, and employees hired on or after January 1, 2008 must be rechecked within 30 days of the five-year anniversary of their date of hire.
  - Requires ICF/IIDs to do post hire checks of employees in direct service positions by December 31, 2014.
  - Revises recordkeeping requirements pertaining to the criminal records check.
  - Sets forth to whom the records check may be disclosed.
- With respect to exclusionary periods for disqualifying offenses, the law and Administrative Code rule changes replace subjective personal character standards with an objective set of exclusionary periods within a tier structure, ranging from provider discretion to permanent exclusion depending upon the type and number of offenses.
- The Administrative Code rule changes also include provisions related to SB 337, which provide that an agency may employ, and an individual may choose to receive services from, a person who has obtained a certificate of qualification for employment

issued by a court of common pleas, or a certificate of achievement and employability in an HCBS-related field issued by ODRC.

- Limited exceptions to the tier provisions include provisions that a provider agency may continue to employ an individual who has been convicted or, or pleaded guilty to, a disqualifying offense contained in Tier IV only if that individual was hired prior to January, 1, 2013 and the conviction or guilty plea was prior to January 1, 2013. Additionally, the provider agency must consider the nature and seriousness of the offense(s) and attest, in writing prior to April 1, 2013, that they have weighed the character and fitness of the employee through the employee's work performance. The written attestation must be maintained in the employee's personnel records.

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