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3701-60-01 Definitions.

- (A) "Applicant" means a person who is under final consideration for employment with a home health agency in a full-time, part-time, or temporary position that involves providing direct care to an individual or is referred to a home health agency by an employment service for such a position.
- (B) "Applicant for licensure" means the individual or agency applying for a skilled home health services license or nonmedical home health services license.
- ~~(B)~~ (C) "Community-based long-term care ~~agency provider~~" ~~has the same meaning~~ means a provider, as defined as in section 173.39 of the Revised Code.
- (D) "Community-based long-term care subcontractor" means a subcontractor, as defined in section 173.38 of the Revised Code.
- ~~(C)~~ (E) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code.
- ~~(D)~~ (F) "Direct care" means any of the following:
- (1) Any service identified in paragraphs ~~(H)~~(K)(1) to ~~(H)~~(K)(6) of this rule that is provided in a patient's place of residence used as the patient's home; or
 - (2) Any activity that requires the person performing the activity to be routinely alone with a patient or to routinely have access to a patient's personal property or financial documents regarding a patient; or
 - (3) For each home health agency individually, any other routine service or activity that the chief administrator of the home health agency designates as direct care.
- ~~(E)~~ (G) "Disqualifying information" means any information gathered from a database review that shows a conviction for or a plea of guilt to:
- (1) Abuse, neglect, or misappropriation; or
 - (2) A disqualifying offense.
- ~~(F)~~ (H) "Disqualifying offense" means any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code.
- ~~(G)~~ (I) "Employee" means a person employed by a home health agency in a full-time, part-time, or temporary position that involves providing direct care to an individual and a person who works in such a position due to being referred to a home health agency by an employment service.
- (J) "Follow-up inspection" means an inspection, which may include on-site and off-site activities, conducted by the department to determine whether the home health agency or nonagency provider has corrected a violation or violations cited on a previous inspection.
- ~~(H)~~ (K) "Home health agency" means a person or government entity, other than a nursing home, residential care facility, or hospice care program, that has the primary function of providing any of the following services to a patient at a place of residence used as the patient's home:
- (1) Skilled nursing care;

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- (2) Physical therapy;
- (3) Speech-language pathology;
- (4) Occupational therapy;
- (5) Medical social services; or
- (6) Home health aide services.

~~(H)~~(L) "Home health aide services" means any of the following services provided by an employee of a home health agency:

- (1) Hands-on bathing or assistance with a tub bath or shower;
- (2) Assistance with dressing, ambulation, and toileting;
- (3) Catheter care but not insertion; or
- (4) Meal preparation and feeding.

~~(J)~~(M) "Hospice care program" has the same meaning as in section 3712.01 of the Revised Code.

(N) "Immediate family member" means a parent, stepparent, grandparent, legal guardian, grandchild, brother, sister, step sibling, spouse, son, daughter, stepchild, aunt, uncle, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, and daughter-in-law.

~~(K)~~(O) "Medical social services" means services provided by a social worker under the direction of a patient's attending physician.

~~(L)~~(P) "Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code.

~~(M)~~(Q) "Multiple disqualifying offenses" means two or more disqualifying offenses. Convictions or guilty pleas resulting from or connected with the same act, shall be counted as one conviction or guilty plea.

(R) "Nonagency provider" means a person who provides direct care to an individual on a self-employed basis and does not employ, directly or through contract, another person to provide the services. "Nonagency provider" does not include any of the following:

- (1) A caregiver who is an immediate family member of the individual receiving direct care;
- (2) A person who provides direct care to not more than two individuals at the same time who are not immediate family members of the care provider;
- (3) A volunteer;
- (4) A person who is certified under section 5104.12 of the Revised Code to provide publicly funded child care as an in-home aide;
- (5) A person who provides privately funded child care;
- (6) A caregiver who is certified by the department of developmental disabilities under Chapter 5123. of the Revised Code.

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(S) "Nonmedical home health services" means any of the following:

(1) Home health aide services defined in paragraph (L) of this rule; and

(2) Personal care services as defined in paragraph (W) of this rule.

~~(N)~~(T) "Nursing home," "residential care facility," and "skilled nursing care" have the same meanings as in section 3721.01 of the Revised Code.

~~(O)~~(U) "Occupational therapy" has the same meaning as in section 4755.04 of the Revised Code.

(V) "Operating location" means the geographical location of the business and operations functions of a home health agency including, but not limited to, record keeping, central staffing, and general business operations. The term operating location may include branches of the home health agency that are under the direct supervision of the operating location. Sub-units of a home health agency at a geographically distinct location which makes direct supervision unfeasible are not included in this definition.

(W) "Personal care services" means any of the following provided to an individual in the individual's home or community:

(1) Hands-on assistance with activities of daily living and instrumental activities of daily living, when incidental to assistance with activities of daily living;

(2) Assistance managing the individual's home and handling personal affairs;

(3) Assistance with self-administration of medications;

(4) Homemaker services when incidental to any of the services identified in subparagraphs (W)(1) to (W)(3) of this rule or when essential to the health and welfare of the individual specifically, not the individual's family;

(5) Respite services for the individual's caregiver;

(6) Errands completed outside of the presence of the individual if needed to maintain the individual's health and safety, including picking up prescriptions and groceries.

~~(P)~~(X) "Physical therapy" has the same meaning as in section 4755.40 of the Revised Code.

(Y) "Residential facility" has the same meaning as in section 5123.19 of the Revised Code.

(Z) "Skilled home health services" means any service identified in paragraphs (K)(1) to (K)(5) of this rule.

~~(Q)~~(AA) "Social worker" means a person licensed under Chapter 4757. of the Revised Code to practice as a social worker or independent social worker.

~~(R)~~(BB) "Speech-language pathology" has the same meaning as in section 4753.01 of the Revised Code.

(CC) "Sub-unit" means a semi-autonomous component of the home health agency that serves recipients in a geographic area different from that of the parent agency and is too far from the parent agency to share administration, supervision, and services on a daily basis. Sub-units must be designated as an operating location and obtain an individual license separate from that of the parent organization.

~~(S)~~(DD) "Waiver agency" has the same meaning as in section 5164.342 of the Revised Code.

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3701-60-02 **Applicability.**

Beginning October 1, 2022, no home health agency or nonagency provider shall do any of the following:

- (A) Provide skilled home health services, as defined in paragraph (Y) of rule 3701-60-01 of the Ohio Administrative Code, through one or more employees unless the agency holds a current, valid license to provide skilled home health services issued under this Chapter;
- (B) Hold the agency, or any employee of the agency, out as a provider of skilled home health services unless the agency holds a current, valid license to provide skilled home health services issued under this Chapter;
- (C) Provide nonmedical home health services, as defined in paragraph (R) of rule 3701-60-01 of the Ohio Administrative Code, through one or more employees unless the agency holds either a current, valid license to provide nonmedical home health services, or a current, valid license to provide skilled home health services, issued under this chapter; or
- (D) Hold the agency, or any employee of the agency, out as a provider of nonmedical home health services unless the agency holds either a current, valid license to provide nonmedical home health services, or a current, valid license to provide skilled home health services, issued under this Chapter.
- (E) Whoever violates this rule as section 3740.02 of the Revised Code is guilty of a misdemeanor of the second degree on a first offense; for each subsequent offense, the person is guilty of a misdemeanor of the first degree.

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3701-60-03 **Initial license application, application process, and renewal of license.**

- (A) The department of health accepts completed applications for licensure from a home health agency or nonagency provider seeking to provide skilled home health services. A complete application for a skilled home health services license includes:
- (1) Completed application forms prescribed by the director;
 - (2) A non-refundable license fee of two hundred and fifty dollars in the form of a cashier's check or a postal money order payable to the "Treasurer, State of Ohio."
 - (3) Documentation providing evidence that the home health agency or nonagency provider meets one of the following:
 - (a) Is certified for participation in the medicare program;
 - (b) Is accredited by the accreditation commission for health care, the community health accreditation partner, the joint commission, or another national accreditation organization approved by the United States centers for medicare and medicaid services and recognized by the department pursuant to rules adopted under section 3740.10 of the Revised Code;
 - (c) Is certified by the department of aging under section 173.391 of the Revised Code to provide community-based long-term care services;
 - (d) If not certified or accredited per paragraphs (A)(3)(a), (A)(3)(b), or (A)(3)(c) of this rule, a notarized attestation that the home health agency or nonagency provider otherwise meets medicare conditions of participation, even though not certified for participation in the medicare program.
 - (e) Documentation providing evidence of the following:
 - (i) The home health agency or nonagency provider was providing skilled home health services on or immediately prior to the effective date of this chapter; or
 - (ii) If the home health agency or nonagency provider was not providing skilled home health services immediately prior to the effective date of this chapter, a surety bond issued by a company licensed to do business in Ohio in the amount of fifty thousand dollars.
 - (f) The name, address, and business telephone number of the home health agency or nonagency provider operating location.
 - (g) The names and addresses of the persons having an ownership or a controlling interest in the home health agency and other information pertaining to ownership or control of the home health agency;
 - (h) The corporate name of the home health agency, if any, and the names, titles, addresses, and telephone numbers of its officers and statutory agent;
 - (i) A list of the skilled home health services that are provided or will be provided by the home health agency or nonagency provider; and
 - (j) A description of the geographic area in which the home health agency or nonagency provides or will provide services.

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(B) The department of health accepts completed applications for licensure from a home health agency or nonagency provider seeking to provide nonmedical home health services. A complete application for a nonmedical home health services license includes:

(1) Completed forms prescribed by the director;

(2) A non-refundable license fee of two hundred and fifty dollars in the form of a cashier's check or a postal money order payable to the "Treasurer, State of Ohio";

(3) Except as provided in paragraph (F) of this rule, a complete application for a nonmedical home health services license includes:

(a) The name, address, and business telephone number of the home health agency or nonagency provider operating location;

(b) The names and addresses of the persons having an ownership or a controlling interest in the home health agency and other information pertaining to ownership or control of the home health agency;

(c) The corporate name of the home health agency, if any, and the names, titles, addresses, and telephone numbers of its officers and statutory agent;

(d) A list of the nonmedical home health services which are or will be provided by the home health agency or nonagency provider;

(e) Copies of all documents filed and recorded with the Ohio secretary of state;

(f) If the applicant for licensure is a nonagency provider, a notarized attestation verifying the identity of the nonagency provider;

(g) In the applicant for licensure is a home health agency, a copy of the home health agency's written criminal records check policy;

(h) A statement identifying the days and hours of operation for the applicant; In the applicant for licensure is a home health agency, a copy of the home health agency's written criminal records check policy;

(i) A description of the nonmedical home health services to be provided, and any policies and procedures related to those services, if applicable;

(j) Identification of the applicant's primary place of business and a description of the geographic area to be served; and

(k) Fingerprint impressions of the primary owner of the home health agency or of the nonagency provider;

(l) Documentation providing evidence of the following:

(i) The agency or nonagency provider was providing nonmedical home health services on or immediately prior to the effective date of this Chapter; or

(ii) If the applicant was not providing nonmedical home health services immediately prior to the effective date of this chapter, a surety bond issued by a company licensed to do business in Ohio in the amount of twenty thousand dollars.

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- (C) A home health agency or nonagency provider that holds a skilled home health services license issued under paragraph (A) of this rule may provide nonmedical home health services without obtaining a nonmedical home health services license.
- (D) The submission of a separate and complete application is necessary for each sub-unit of a home health agency, as defined in paragraph (CC) of rule 3701-60-01 of this chapter, operated by a home health agency.
- (E) A home health agency operating in another state that seeks to provide services to patients in Ohio will need to establish an administrative office in Ohio prior to submitting an application for licensure under paragraphs (A) or (C) of this rule and comply with the rules set forth in Chapter 3701-60 of the Administrative Code in order to obtain a license. All Ohio patients' clinical records are to be maintained at the home health agency's Ohio administrative office.
- (F) Items identified in paragraph (B)(3)(e) to (k) of this rule are waived if the provider submits evidence that they are certified by the department of aging under section 173.391 of the Revised Code to provide community-based long-term care services.
- (G) When reviewing a license application, the director may request additional information to determine compliance with Chapter 3740. of the Revised Code and this chapter. To be included in a complete application, the applicant for licensure is obliged to furnish any requested information within fourteen days after the mailing date of the director's request.
- (H) An application for license renewal is considered timely when it is made at least ninety days prior to the expiration of the license and includes:
- (1) In the same manner as application for the initial license, a complete application and renewal fee in accordance with paragraphs (A) or (B) of this rule.
 - (2) An application for license renewal will be approved if the program continues to meet the requirements of Chapter 3740. of the Revised Code and Chapter 3701-60 of the Administrative Code. If the program does not meet the requirements for licensure, the director may deny renewal of the license, in accordance with Chapter 119. of the Revised Code.
- (I) A written notice to the director within ten days for the following reasons:
- (1) Any change in the information specified in the license application under paragraphs (A)(3) or (B)(3) of this rule; or
 - (2) Any other change that would render the information submitted in the license application inaccurate.
- (J) Except as provided in section 3740.07 of the Revised Code, a license issued under section 3740.04 of the Revised Code is valid for three years. The department of health may adjust an initial license renewal date to align renewal of a license issued under this chapter with the renewal of a certification or accreditation identified in paragraphs (A)(3)(a) to (A)(3)(c) of this rule.

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3701-60-04 **Enforcement.**

(A) Subject to Chapter 119. of the Revised Code, the director may deny, suspend, or revoke a license if the licensee:

(1) Made any material misrepresentation in the application for licensure;

(2) Fails to timely renew it's license; or

(3) No longer meets the requirements of Chapter 3740. of the Revised Code or this chapter.

(B) A home health agency that has had its license application denied, or its license suspended or revoked, may request a hearing from the director. Hearings are to be conducted in accordance with chapter 119. of the Revised Code.

(C) A home health agency that has been denied a license may request from the department of health an informal dispute resolution. This review shall be conducted by an employee of the department who did not participate in and was not otherwise involved in any way with the license evaluation.

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3701-60-05 State and national database review.

- (A) Except as provided for in paragraph (H) of rule 3701-60-06 of the Administrative Code, and prior to conducting a criminal records check, the chief administrator or his designee of a home health agency shall conduct, with respect to each applicant for a position involving the provision of direct care and each employee who provides direct care, a check of the following databases:
- (1) The "System for Award Management" maintained by the United States general services administration, available at <http://www.sam.gov/>;
 - (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, available at <http://exclusions.oig.hhs.gov/>;
 - (3) The registry of employees guilty of abuse, neglect, or misappropriation maintained by the Ohio department of developmental disabilities, available at https://its.prodapps.dodd.ohio.gov/ABR_Default.aspx;
 - (4) The sex offender and child-victim database maintained by the Ohio attorney general, available at <http://www.icrimewatch.net/index.php?AgencyID=55149&disc=>;
 - (5) The database of inmates maintained by the Ohio department of rehabilitation and correction, available at <https://appgateway.drc.ohio.gov/OffenderSearch>; and The Ohio nurse aide registry, maintained by the Ohio department of health, available at https://odhgateway.odh.ohio.gov/nar/nar_registry_search.aspx. If an applicant does not present proof of having been a resident of this state for the five year period immediately prior to the date of the database review, the chief administrator of a home health agency or his designee shall conduct a database review of the nurse aide registry in the state or states in which the applicant has lived.
 - (6) The Ohio nurse aide registry, maintained by the Ohio department of health, available at https://odhgateway.odh.ohio.gov/nar/nar_registry_search.aspx. If an applicant does not present proof of having been a resident of this state for the five year period immediately prior to the date of the database review, the chief administrator of a home health agency or his designee shall conduct a database review of the nurse aide registry in the state or states in which the applicant has lived.
- (B) Except as provided for in rule 3701-60-06 of the Administrative Code, no home health agency shall employ a person in a position involving the provision of direct care if a review of the databases listed in paragraphs (A)(1) to (A)(5) of this rule discloses disqualifying information regarding the applicant or employee or if a review of the database listed in paragraph (A)(6) of this rule discloses a statement detailing findings by the director of health that the applicant or employee neglected or abused a long-term care facility or residential care facility resident or misappropriated property of such a resident.
- (C) If the review of the free databases listed in paragraph (A) of this rule discloses disqualifying information about an applicant or employee, the home health agency shall inform the applicant or employee of the disqualifying information.
- (D) The chief administrator of a home health agency shall conduct a check of the databases listed in paragraph (A) of this rule prior to requesting an update to the background check required in paragraph (B) of this rule.
- (E) The home health agency is not required to review the free databases listed under paragraph (A) of this rule if the applicant or employee was referred to the home health agency by an employment service that refers

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applicants to employers to fill full-time, part-time, or temporary positions involving direct care if the employment service provides the home health agency with the confirmation required by paragraph (I) of rule 3701-60-06 of the Administrative Code.

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3701-60-06 **Requirements for criminal records check.**

- (A) The chief administrator of a home health agency or his designee shall request that the superintendent conduct a criminal records check with respect to each applicant for a direct care position.
- (B) The chief administrator of a home health agency or his designee shall conduct a criminal background check on employees who provide direct care as follows:
- (1) For employees hired prior to January 1, 2008, no later than thirty days after the anniversary of the employee's date of hire and at least every five years thereafter; or
 - (2) For employees hired on or after January 1, 2008, no later than thirty days after the fifth anniversary of the employee's date of hire and at least every five years thereafter.
- (C) Residency requirement.
- (1) If the applicant 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 applicant from the United States federal bureau of investigation in a criminal records check, the chief administrator of the home health agency shall request that the superintendent obtain information from the United States federal bureau of investigation as part of the criminal records check of the applicant.
 - (2) Even if the applicant presents proof of having been a resident of this state for the five year period or proof of an United States federal bureau of investigation criminal records check as specified in paragraph (C)(1) of this rule, the home health agency may request that the superintendent include information from the United States federal bureau of investigation in the criminal records check.
- (D) Notification to the applicant. The chief administrator of the home health agency or his designee shall notify each applicant and employee of the following:
- (1) That the individual is required to provide a set of fingerprint impressions and that a criminal records check is required to be conducted if the individual comes under final consideration for employment, or, in the case of an employee, that a criminal records check will be conducted as a condition of continued employment;
 - (2) If applicable, the fee required under paragraph (E)(2) of this rule; and
 - (3) Any fees authorized under division (C)(2) of section 109.572 of the Revised Code that are associated with obtaining fingerprint impressions.
- (E) Investigation fee.
- (1) A home health agency 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 conducted pursuant to this rule.
 - (2) A home health agency may charge an applicant a fee not exceeding the amount the home health agency pays under paragraph (D)(1) of this rule. A home health agency may collect a fee only if both of the following apply:

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- (a) The home health agency notifies the person at the time of the initial application for employment of the amount of the fee and that, unless the fee is paid by the person, the person will not be considered for employment;
- (b) The medicaid program established under Chapter 5162. of the Revised Code does not reimburse the home health agency for the fee it pays under paragraph (D)(1) of this rule.
- (F) Criminal records check forms. The chief administrator of a home health agency required by this rule to request a criminal records check shall do all of the following:

 - (1) Provide each applicant and employee a copy of the form or forms prescribed by division (C)(1) of section 109.572 of the Revised Code and a standard fingerprint impression sheet, or instructions for acquiring a standard fingerprint impression sheet prescribed pursuant to division (C)(2) of that section.

 - (a) An applicant who meets the residency requirement shall be provided a copy of the bureau of criminal identification and investigation "civilian identification" form for fingerprint impressions; in addition, if the home health agency chooses to do so, the applicant may also be provided an United States federal bureau of investigation "applicant" fingerprint impression form;
 - (b) An applicant who does not meet the residency requirement, specified in paragraph (C) of this rule, shall be provided both the bureau of criminal identification and investigation and United States federal bureau of investigation fingerprint impression forms.
 - (2) Obtain the completed form or forms and standard fingerprint impression sheet or sheets from the applicant;
 - (3) Forward the completed form or forms and standard fingerprint impression sheet or sheets to the superintendent.
- (G) An applicant or employee provided the forms and standard fingerprint impression sheets under paragraph (F)(1) of this rule, who fails to complete the forms or to provide fingerprint impressions, shall not be employed in any position for which a criminal records check is required by this rule.
- (H) If an applicant or employee has been the subject of a criminal records check pursuant to division (D) of section 109.572 of the Revised Code within the previous twelve months, the chief administrator of the home health agency may request and accept a reverification of that criminal records check. A reverification of a criminal records check does not relieve the home health agency of the requirements under paragraph (C) of this rule if the applicant or employee has not been a resident of this state for the five year period immediately prior to the date the criminal records check.
- (I) Exception to criminal records check requirement. The home health agency is not required to request that the superintendent conduct a criminal records check of an applicant if the applicant has been referred to the home health agency by an employment service that supplies full-time, part-time, or temporary staff for positions involving the direct care to an individual if all of the following apply:

 - (1) The chief administrator receives from the employment service confirmation that a review of the databases required by rule 3701-60-03 of the Administrative Code was conducted with regard to the applicant or employee;
 - (2) The chief administrator receives from the employment service confirmation that a report of the results of a criminal records check regarding the applicant or employee has been conducted by the superintendent

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within the one-year period immediately preceding the following:

- (a) In the case of an applicant, the date of the applicant's referral by the employment service to the home health agency;
- (b) In the case of an employee, the date by which the home health agency would otherwise have to request a criminal records check of the employee pursuant to this rule; and
- (3) The report of both the database review and the criminal records check demonstrates that the applicant or employee has not been convicted of or pleaded guilty to an offense listed or described in paragraph (A) of rule 3701-60-06 of the Administrative Code.

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3701-60-07 **Conditional employment.**

(A) A home health agency may employ an applicant conditionally prior to obtaining a criminal records check regarding the applicant if the:

- (1) Review of the state and national databases required by rule 3701-60-05 of the Administrative Code does not reveal any disqualifying information;
- (2) The applicant provides the home health agency with a completed fingerprint impression sheet before the commencement of the applicant's conditional employment; and
- (3) Chief administrator of the home health agency requests the criminal records check required by rule 3701-60-05 of the Administrative Code not later than five business days after the applicant begins conditional employment; or
- (4) Applicant is referred to the home health agency by an employment service, the employment service or the applicant provides the chief administrator of the agency a letter that is on the letterhead of the employment service, the letter is dated and signed by a supervisor or another designated official of the employment service, and the letter states all of the following:
 - (a) That the employment service has requested the superintendent to conduct a criminal records check regarding the applicant;
 - (b) That the requested criminal records check is to include a determination of whether the applicant has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense;
 - (c) That the employment service has not received the results of the criminal records check as of the date set forth on the letter; and
 - (d) That the employment service promptly will send a copy of the results of the criminal records check to the chief administrator of the home health agency when the employment service receives the results.

(B) If a home health agency employs an applicant conditionally pursuant to paragraph (A)(2) of this rule, the employment service, on its receipt of the results of the criminal records check, promptly shall send a copy of the results to the chief administrator of the agency.

(C) The home health agency shall not employ an applicant prior to obtaining the completed form or forms and standard fingerprint impression sheet or sheets from the applicant as required in paragraph (F) of rule 3701-60-04 of the Administrative Code. For purposes of this prohibition, the applicant cannot perform or participate in any job related activity pertaining to a position involving the provision of direct care to an individual that places the applicant in an active pay status.

(D) The home health agency shall terminate the individual's conditional employment if:

- (1) In the case of an applicant for a position providing direct care to an individual, the results of the records check, other than the results of any request for information from the United States federal bureau of investigation, are not obtained within sixty days after the date the request is made; or
- (2) The results or any part of the records check indicate that the individual has been convicted of or pleaded

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guilty to any of the offenses listed or described in paragraph (A) of rule 3701-60-06 of the Administrative Code, unless the home health agency chooses to employ the applicant pursuant to rule 3701-60-07 of the Administrative Code.

(E) Termination under paragraph (D) of this rule shall be considered just cause for discharge for purposes of division (D)(2) of section 4141.29 of the Revised Code if the individual makes any attempt to deceive the home health agency about the individual's criminal record.

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3701-60-08 **Criminal records check: disqualifying offenses.**

(A) Except as provided in rule 3701-60-07 of the Administrative Code, no employer shall employ or continue to employ a person in a position that involves providing direct care to an individual if the person has been convicted of:

(1) A violation of any of the following sections of the Revised Code:

- (a) 959.13 (cruelty to animals);
- (b) 959.131 (prohibitions concerning companion animals);
- (c) 2903.01 (aggravated murder);
- (d) 2903.02 (murder);
- (e) 2903.03 (voluntary manslaughter);
- (f) 2903.04 (involuntary manslaughter);
- (g) 2903.041 (reckless homicide);
- (h) 2903.11 (felonious assault);
- (i) 2903.12 (aggravated assault);
- (j) 2903.13 (assault);
- (k) 2903.15 (permitting child abuse);
- (l) 2903.16 (failing to provide for a functionally impaired person);
- (m) 2903.21 (aggravated menacing);
- (n) 2903.211 (menacing by stalking);
- (o) 2903.22 (menacing);
- (p) 2903.34 (patient abuse and neglect);
- (q) 2903.341 (patient endangerment);
- (r) 2905.01 (kidnapping);
- (s) 2905.02 (abduction);
- (t) 2905.04 (child stealing, as it existed before July 1, 1996);
- (u) 2905.05 (criminal child enticement);
- (v) 2905.11 (extortion);
- (w) 2905.12 (coercion);

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(x) 2905.32 (trafficking in persons);

(y) 905.33 (unlawful conduct with respect to documents);

(z) 2907.02 (rape);

(aa) 2907.03 (sexual battery);

(bb) 2907.04 (unlawful sexual conduct with a minor, formerly corruption of a minor);

(cc) 2907.05 (gross sexual imposition);

(dd) 2907.06 (sexual imposition);

(ee) 2907.07 (importuning);

(ff) 2907.08 (voyeurism);

(gg) 2907.09 (public indecency);

(hh) 2907.12 (felonious sexual penetration, as it existed before July 1, 1996);

(ii) 2907.21 (compelling prostitution);

(jj) 2907.22 (promoting prostitution);

(kk) 2907.23 (enticement or solicitation to patronize a prostitute; procurement of a prostitute for another);

(ll) 2907.24 (soliciting after positive HIV test);

(mm) 2907.25 (prostitution);

(nn) 2907.31 (disseminating matter harmful to juveniles);2907.32 (pandering obscenity);

(oo) 2907.32 (pandering obscenity);

(pp) 2907.321 (pandering obscenity involving a minor);;

(qq) 2907.322 (pandering sexually oriented matter involving a minor);

(rr) 2907.323 (illegal use of a minor in nudity-oriented material or performance);

(ss) 2907.33 (deception to obtain matter harmless to juveniles);

(tt) 2909.02 (aggravated arson);

(uu) 2909.03 (arson);

(vv) 2909.04 (disrupting public services);

(ww) 2909.22 (soliciting or providing support for act of terrorism);

(xx) 2909.23 (making terroristic threat);

(yy) 2909.24 (terrorism);

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(zz) 2911.01 (aggravated robbery);

(aaa) 2911.02 (robbery);

(bbb) 2911.11 (aggravated burglary);

(ccc) 2911.12 (burglary);

(ddd) 2911.13 (breaking and entering);

(eee) 2913.02 (theft);

(fff) 2913.03 (unauthorized use of a vehicle);

(ggg) 2913.04 (unauthorized use of property, computer, cable, or telecommunication property);

(hhh) 2913.05 (telecommunications fraud);

(iii) 2913.11 (passing bad checks);

(jjj) 2913.21 (misuse of credit cards);

(kkk) 2913.31 (forging identification cards);

(lll) 2913.32 (criminal simulation);

(mmm) 2913.40 (medicaid fraud);

(nnn) 2913.41 (defrauding a rental agency or hostelry);

(ooo) 2913.42 (tampering with records);

(ppp) 2913.43 (securing writings by deception);

(qqq) 2913.44 (impersonating an officer);

(rrr) 2913.441 (unlawful display of law enforcement emblem);

(sss) 2913.45 (defrauding creditors);

(ttt) 2913.46 (illegal use of SNAP or WIC program benefits);

(uuu) 2913.47 (insurance fraud);

(vvv) 2913.48 (workers' compensation fraud);

(www) 2913.49 (identify fraud);

(xxx) 2913.51 (receiving stolen property);

(yyy) 2917.01 (inciting to violence);

(zzz) 2917.02 (aggravated riot);

(aaaa) 2917.03 (riot);

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(bbbb) 2917.31 (inducing panic);

(cccc) 2919.12 (unlawful abortion);

(dddd) 2919.121 (unlawful abortion upon minor);

(eeee) 2919.123 (unlawful distribution of an abortion-inducing drug);

(ffff) 2919.22 (endangering children);

(gggg) 2919.23 (interference with custody);

(hhhh) 2919.24 (contributing to unruliness or delinquency of child);

(iiii) 2919.25 (domestic violence);

(jjjj) 2921.03 (intimidation);

(kkkk) 2921.11 (perjury);

(llll) 2921.11 (perjury);

(mmmm) 2921.13 (falsification - in theft offense- to purchase firearm);

(nnnn) 2921.21 (compounding a crime);

(oooo) 2921.24 (disclosure of confidential information);

(pppp) 2921.32 (obstructing justice);

(qqqq) 2921.321 (assaulting or harassing a police dog, horse, or service animal);

(rrrr) 2921.34 (escape);

(ssss) 2921.35 (aiding escape or resistance to lawful authority);

(tttt) 2921.36 (illegal conveyance of weapons, drugs or other prohibited items onto grounds of detention facility or institution);

(uuuu) 2921.51 (impersonation of peace officer);

(vvvv) 2923.12 (carrying concealed weapon);

(wwww) 2923.122 (illegal conveyance or possession of deadly weapon or dangerous ordinance in a school safety zone, illegal possession of an object indistinguishable from a firearm in a school safety zone);

(xxxx) 2923.123 (illegal conveyance, possession, or control of deadly weapon or ordnance into a courthouse);

(yyyy) 2923.13 (having weapons while under disability);

(zzzz) 2923.161 (improperly discharging a firearm at or into a habitation or school);

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(aaaaa) 2923.162 (discharge of firearm on or near prohibited premises);

(bbbbb) 2923.21 (improperly furnishing firearms to minor);

(ccccc) 2923.32 (engaging in a pattern of corrupt activity);

(ddddd) 2923.42 (participating in criminal gang);

(eeeee) 2925.02 (corrupting another with drugs);

(fffff) 2925.03 (trafficking in drugs);

(ggggg) 2925.04 (illegal manufacture of drugs or cultivation of marijuana);

(hhhhh) 2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs);

(iiiiii) 2925.05 (funding of drug or marijuana trafficking);

(jjjjj) 2925.06 (illegal administration or distribution of anabolic steroids);

(kkkkk) 2925.09 (illegal administration, dispensing, distribution, manufacture, possession, selling, or using of any dangerous veterinary drug);

(lllll) 2925.11 (possession of drugs);

(mmmmm) 2925.13 (permitting drug abuse);

(nnnnn) 2925.14 (illegal use, possession, dealing, selling, or advertising of drug paraphernalia);

(ooooo) 2925.141 (illegal use or possession of marijuana drug paraphernalia);

(ppppp) 2925.22 (deception to obtain dangerous drugs);

(qqqqq) 2925.23 (illegal processing of drug documents);

(rrrrr) 2925.24 (tampering with drugs);

(sssss) 2925.36 (dispensing drug samples);

(ttttt) 2925.55 (unlawful purchase of pseudoephedrine product);

(uuuuu) 2925.56 (unlawful sale of pseudoephedrine product);

(vvvvv) 2927.12 (ethnic intimidation);

(wwwww) 3716.11 (placing harmful objects in food or confection);

(2) If related to an offense listed under paragraph (A)(1) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or

(3) 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 offenses or violations described in paragraphs (A)(1)(a) to (A)(1)(wwww) of this rule.

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3701-60-09 **Disqualifying offense exclusionary periods; certificates; pardons.**

(A) Disqualifying offense exclusionary periods: Except as set forth in paragraphs (B), (C) and (D) of this rule, a home health agency may employ an applicant or continue to employ an employee who has been convicted of or pleaded guilty to an offense listed in rule 3701-60-08 of the Administrative Code in a position involving providing direct care to an individual pursuant to the following exclusionary periods:

(1) Tier I: Permanent exclusion: No home health agency shall employ an applicant or continue to employ an employee in a position involving providing direct care to an individual who has been convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code:

(a) 2903.01 (aggravated murder);

(b) 2903.02 (murder);

(c) 2903.03 (voluntary manslaughter);

(d) 2903.11 (felonious assault);

(e) 2903.15 (permitting child abuse);

(f) 2903.16 (failing to provide for a functionally-impaired person);

(g) 2903.34 (patient abuse or neglect);

(h) 2903.341 (patient endangerment);

(i) 2905.01 (kidnapping);

(j) 2905.02 (abduction);

(k) 2905.32 (human trafficking);

(l) 2905.33 (unlawful conduct with respect to documents);

(m) 2907.02 (rape);

(n) 2907.03 (sexual battery);

(o) 2907.04 (unlawful sexual conduct with a minor, formerly corruption of a minor);

(p) 2907.05 (gross sexual imposition);

(q) 2907.06 (sexual imposition);

(r) 2907.07 (importuning);

(s) 2907.08 (voyeurism);

(t) 2907.12 (felonious sexual penetration);

(u) 2907.31 (disseminating matter harmful to juveniles);

(v) 2907.32 (pandering obscenity);

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(w) 2907.321 (pandering obscenity involving a minor);

(x) 2907.322 (pandering sexually-oriented matter involving a minor);

(y) 2907.323 (illegal use of a minor in nudity-oriented material or performance);

(z) 2909.22 (soliciting or providing support for an act of terrorism);

(aa) 2909.23 (making terroristic threats);

(bb) 2909.24 (terrorism);

(cc) 2913.40 (medicaid fraud);

(dd) If related to another offense under paragraph (A)(1) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity);

(ee) 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); or,

(ff) 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 offenses or violations described in paragraphs (A)(1)(a) to (A)(1)(ee) of this rule.

(2) Tier II: Ten-year exclusionary period:

(a) No home health agency shall employ an applicant or continue to employ an employee in a position providing direct care to an individual for a period of ten years from the date the applicant or employee was fully discharged from all imprisonment, probation, or parole, if the applicant or employee has been convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code:

(i) 2903.04 (involuntary manslaughter);

(ii) 2903.041 (reckless homicide);

(iii) 2905.04 (child stealing, as it existed prior to July 1, 1996);

(iv) 2905.05 (child enticement);

(v) 2905.11 (extortion);

(vi) 2907.21 (compelling prostitution);

(vii) 2907.22 (promoting prostitution);

(viii) 2907.23 (enticement or solicitation to patronize a prostitute; procurement of a prostitute for another.);

(ix) 2909.02 (aggravated arson);

(x) 2909.03 (arson);

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- (xi) 2911.01 (aggravated robbery);
- (xii) 2911.11 (aggravated burglary);
- (xiii) 2913.46 (illegal use of SNAP or WIC program benefits);
- (xiv) 2913.48 (worker's compensation fraud);
- (xv) 2913.49 (identity fraud);
- (xvi) 2917.02 (aggravated riot);
- (xvii) 2923.12 (carrying concealed weapons);
- (xviii) 2923.122 (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);
- (xix) 2923.123 (illegal conveyance, possession, or control of deadly weapon or ordnance into a courthouse);
- (xx) 2923.13 (having weapons while under disability);
- (xxi) 2923.161 (improperly discharging a firearm at or into a habitation or school);
- (xxii) 2923.162 (discharge of firearm on or near prohibited premises);
- (xxiii) 2923.21 (improperly furnishing firearms to a minor);
- (xxiv) 2923.32 (engaging in a pattern of corrupt activity);
- (xxv) 2923.42 (participating in a criminal gang);
- (xxvi) 2925.02 (corrupting another with drugs);
- (xxvii) 2925.03 (trafficking in drugs);
- (xxviii) 2925.04 (illegal manufacture of drugs or cultivation of marijuana);
- (xxix) 2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs)
- (xxx) 3716.11 (placing harmful or hazardous objects in food or confection);
- (xxxi) If related to another offense under paragraph (A)(2)(a) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or,
- (xxxii) 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 offenses or violations described under paragraphs (A)(2)(a)(i) to (A)(2)(a)(xxxi) of this rule.
- (b) If an applicant or employee has been convicted of multiple disqualifying offenses, including an offense listed in paragraph (A)(2)(a) of this rule, and another offense or offenses listed in paragraph (A)(2)(a), (A)(3)(a), or (A)(4)(a) of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act, the applicant or employee is subject to a fifteen-year

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exclusionary period.

(3) Tier III: Seven-year exclusionary period:

(a) No employer shall employ an applicant or continue to employ an employee in a position providing direct care to an individual for a period of seven years from the date the applicant or employee was fully discharged from all imprisonment, probation, or parole, if the applicant or employee has been convicted of, or pleaded guilty to, any offense in any of the following sections of the Revised Code:

(i) 959.13 (cruelty to animals);

(ii) 959.131 (prohibitions concerning companion animals);

(iii) 2903.12 (aggravated assault);

(iv) 2903.21 (aggravated menacing);

(v) 2903.211 (menacing by stalking);

(vi) 2905.12 (coercion);

(vii) 2909.04 (disrupting public services);

(viii) 2911.02 (robbery);

(ix) 2911.12 (burglary);

(x) 2913.47 (insurance fraud);

(xi) 2917.01 (inciting to violence);

(xii) 2917.03 (riot);

(xiii) 2917.31 (inducing panic);

(xiv) 2919.22 (endangering children);

(xv) 2919.25 (domestic violence);

(xvi) 2921.03 (intimidation);

(xvii) 2921.11 (perjury);

(xviii) 2921.13 (falsification, falsification in a theft offense, falsification to purchase a firearm, or falsification to obtain a concealed handgun license);

(xix) 2921.34 (escape);

(xx) 2921.35 (aiding escape or resistance to lawful authority);

(xxi) 2921.36 (illegal conveyance of weapons, drugs, or other prohibited items onto the grounds of a detention facility or institution);

(xxii) 2925.05 (funding drug trafficking);

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(xxiii) 2925.06 (illegal administration of distribution of anabolic steroids);

(xxiv) 2925.24 (tampering with drugs);

(xxv) 2927.12 (ethnic intimidation);

(xxvi) If related to another offense under paragraph (A)(3)(a) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or,

(xxvii) (xxvii) 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 offenses or violations described under paragraphs (A)(3)(a)(i) to (A)(3)(a)(xxvii) of this rule.

(b) If an applicant or employee has been convicted of multiple disqualifying offenses, including an offense listed in paragraph (A)(3)(a) of this rule, and another offense or offenses listed in paragraph (A)(3)(a) or (A)(4)(a) of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act, the applicant or employee is subject to a ten-year exclusionary period.

(4) Tier IV: Five-year exclusionary period:

(a) No home health agency shall employ and applicant or continue to employ an employee in a position providing direct care to an individual for a period of five years from the date the applicant or employee was fully discharged from all imprisonment, probation, or parole, if the applicant or employee has been convicted of, or pleaded guilty to, and offense in any of the following sections of the Revised Code:

(b) If an applicant or employee has been convicted of multiple disqualifying offenses listed in paragraph (A)(4)(a) of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act, the applicant or employee is subject to a seven-year exclusionary period.

(5) Tier V: No exclusionary period: A home health agency may employ an applicant or continue to employ an employee in a position providing direct care to an individual who has been convicted of, or pleaded guilty to, any of the following offenses:

(a) 2925.11 (drug possession that is a minor drug possession offense);

(b) 2925.14 (illegal use, possession, dealing, selling, or advertising of drug paraphernalia);

(c) 2925.141 (illegal use or possession of marijuana drug paraphernalia); or

(d) 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 offenses or violations described under paragraph (A)(5) of this rule.

(B) Certificates: Except for individual with a disqualifying offense listed in paragraph (A)(1) of this rule, a home health agency may hire an applicant or continue to employ an employee who has been issued either a:

(1) 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,

(2) 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

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(C) {Enter paragraph text here}

(1) The offense or offenses are listed in paragraph (A)(4) of this rule;

(2) The employee was hired prior to January 1, 2013;

(3) The conviction or plea of guilt occurred prior to January 1, 2013;

(4) The home health agency has considered the nature and seriousness of the offense or offenses and attests, in writing prior to April 1, 2013, to the employee's character and fitness based on their demonstrated work performance.

(D) Pardons: A conviction or a plea of guilty to an offense listed or described in rule 3701-60-08 of the Administrative Code shall not prevent an applicant's employment or an employee's continued employment under any of the following circumstances:

(1) The applicant or employee has been granted an unconditional pardon for the offense pursuant to Chapter 2967. of the Revised Code;

(2) The applicant or employee has been 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;

(3) The conviction or guilty plea has been set aside pursuant to law; or,

(4) The applicant or employee has been 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.

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3701-60-10 Records and reports.

(A) Criminal record check disclosure. The report of the criminal records check conducted pursuant to a request made under this chapter 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 applicant or employee who is the subject of the criminal records check or the applicant or employee's representative;
- (2) The chief administrator of the home health agency requesting the criminal records check or the administrator's representative;
- (3) The administrator of any other facility, agency, or program that provides direct care to individuals that is owned or operated by the same entity that owns or operates the home health agency that requested the criminal records check;
- (4) The employment service that requested the check;
- (5) The director of health or the director's designee;
- (6) The director of aging or the director's designee if either of the following apply:
 - (a) In the case of a criminal records check requested by a home health agency, the home health agency also is a community-based long-term care agency; or
 - (b) In the case of a criminal records check requested by an employment service, the employment service makes the request for an applicant or employee the employment service refers to a home health agency that also is a community-based long-term care agency;
- (7) The director of job and family services and the staff of the department of job and family services who are involved in the administration of the medicaid program if either of the following apply:
 - (a) In the case of a criminal records check requested by a home health agency, the home health agency also is a waiver agency;
 - (b) In the case of a criminal records check requested by an employment service, the employment service makes the request for an applicant or employee the employment service refers to a home health agency that also is a waiver agency;
- (8) Any court, hearing officer or other necessary individual involved in a case dealing any of the following:
 - (a) A denial of employment of the applicant or dealing with employment employee;
 - (b) Employment or unemployment benefits of the applicant or employee;
 - (c) A civil or criminal action regarding the medicaid program.

(B) Personnel record. The home health agency shall maintain, in a confidential manner either sealed within, or separate from, but a part of the personnel record:

- (1) The criminal records report; and
- (2) Any disqualifying information discovered during the state and national database check required by rule

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3701-60-05 of the Administrative Code.

(C) Documentation of compliance. The home health agency shall maintain a roster of applicants and employees, accessible by the director, which includes, but is not limited to:

(1) The name of each applicant or employee;

(2) The date the criminal records check request is submitted to the bureau of criminal identification and investigation;

(3) The date the criminal records check request is received from the bureau of criminal identification and investigation;

(4) A determination of whether the results of the check revealed that the applicant or employee committed a disqualifying offense(s); and

(5) The date the employee starts work.

(D) Attestation. The home health agency shall, upon request, provide to the director written confirmation of compliance with the provisions of this chapter in a format that is specified by the director and is consistent with state law.

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3701-60-11 **Liability; compliance action.**

- (A) 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 an applicant or employee who a home health agency employs in a position that involves providing direct care to an individual, the following shall apply:
- (1) If the home health agency employed the applicant or employee in good faith and reasonable reliance on the report of a criminal records check requested under this chapter, the home health agency 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 home health agency employed the applicant in good faith on a conditional basis pursuant to rule 3701-60-07 of the Administrative Code, the home health agency shall not be found negligent solely because it employed the individual prior to receiving the report of a criminal records check requested under this chapter;
- (B) As authorized by the applicable state laws and rules governing the specific home health agency, the department may take appropriate action against a home health agency that violates the requirements of Chapter 3701-60 of the Administrative Code and the authorizing sections of the Revised Code applicable to the specific home health agency.