

**3701-60-07 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 3701-60-06 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);
- (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);
- (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)(xxx) of this rule.

- (b) If an applicant or employee has been convicted of multiple disqualifying offenses, including an offense listed in paragraphs (A)(2)(a) of this rule, and another offense or offenses listed in paragraphs (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 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);
- (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) 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:
 - (i) 2903.13 (assault);
 - (ii) 2903.22 (menacing);
 - (iii) 2907.09 (public indecency);
 - (iv) 2907.24 (soliciting);
 - (v) 2907.25 (prostitution);
 - (vi) 2907.33 (deception to obtain matter harmful to juveniles);
 - (vii) 2911.13 (breaking and entering);
 - (viii) 2913.02 (theft);
 - (ix) 2913.03 (unauthorized use of a vehicle);
 - (x) 2913.04 (unauthorized use of computer, cable, or telecommunication property);

- (xi) 2913.05 (telecommunications fraud);
- (xii) 2913.11 (passing bad checks);
- (xiii) 2913.21 (misuse of credit cards);
- (xiv) 2913.31 (forgery, forging identification cards);
- (xv) 2913.32 (criminal simulation);
- (xvi) 2913.41 (defrauding a rental agency or hostelry);
- (xvii) 2913.42 (tampering with records);
- (xviii) 2913.43 (securing writings by deception);
- (xix) 2913.44 (personating an officer);
- (xx) 2913.441 (unlawful display of law enforcement emblem);
- (xxi) 2913.45 (defrauding creditors);
- (xxii) 2913.51 (receiving stolen property);
- (xxiii) 2919.12 (unlawful abortion);
- (xxiv) 2919.121 (unlawful abortion upon minor);
- (xxv) 2919.123 (unlawful distribution of an abortion-inducing drug);
- (xxvi) 2919.23 (interference with custody);
- (xxvii) 2919.24 (contributing to the unruliness or delinquency of a child);
- (xxviii) 2921.12 (tampering with evidence);
- (xxix) 2921.21 (compounding a crime);
- (xxx) 2921.24 (disclosure of confidential information);
- (xxxi) 2921.32 (obstructing justice);
- (xxxii) 2921.321 (assaulting or harassing a police dog, horse, or service animal);
- (xxxiii) 2921.51 (impersonation of peace officer);
- (xxxiv) 2925.09 (illegal administration, dispensing, distribution, manufacture, possession, selling, or using of any dangerous veterinary drug);
- (xxxv) 2925.11 (drug possession, other than a minor drug possession offense);
- (xxxvi) 2925.13 (permitting drug abuse);
- (xxxvii) 2925.22 (deception to obtain a dangerous drug);
- (xxxviii) 2925.23 (illegal processing of drug documents);

- (xxxix) 2925.36 (illegal dispensing of drug samples);
 - (xl) 2925.55 (unlawful sale of pseudophedrine product);
 - (xli) 2925.56 (unlawful sale of pseudophedrine product); or,
 - (xlii) If related to another offense under paragraph (A)(4)(a) of this rule, 2923.01 (conspiracy), 2923.02 (attempt), or 2923.03 (complicity); or,
 - (xliii) A violation of an existing or former municipal ordinance or law of this state, nay other state, or the United States that is substantially equivalent to any of the offenses or violations described under paragraphs (A)(4)(a)(i) to (A)(4)(a)(xli) of this rule.
- (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 marihuana 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 Code.
- (C) Limited grandfathering: A home health agency may continue to employ an employee who is otherwise excluded by paragraph (A)(4) of this rule if:
- (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 3701-60-06 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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