

**ELDERLY SERVICES PROGRAM (ESP<sup>SM</sup>)**

**CONDITIONS OF PARTICIPATION**

**Effective August 1, 2013**

**(BCESP) (CCESP) (HCESP) (WCESP)**

**ELDERLY SERVICES PROGRAM  
SERVICE PROVIDER  
CONDITIONS OF PARTICIPATION**

TABLE OF CONTENTS

CONDITION 1.	PROVIDER REQUIREMENTS .....	3
CONDITION 2.	ADMINISTRATIVE POLICIES .....	5
CONDITION 3.	PERSONNEL REQUIREMENTS .....	6
CONDITION 4.	SERVICE DELIVERY .....	7
CONDITION 5.	COMPLIANCE .....	9
CONDITION 6.	FREE DATABASE REVIEWS AND BCII CRIMINAL RECORDS CHECK ...	10
Attachment A	COA Code of Ethics .....	18
Attachment B	Criminal Records Check Tier References .....	20

## **CONDITION 1. PROVIDER REQUIREMENTS**

1.0 The Provider must be a formally organized business or service agency, registered with the Ohio Secretary of State, that has been operating, providing, and being paid for the same services for which certification is being applied for at least five (5) adults in the community in the counties which Council on Aging of Southwestern Ohio (COA) serves for a minimum of twenty-four (24) consecutive months at the point of application. Those agencies registered to do business in Ohio and in good standing with the laws of the State of Ohio, that are certified to provide PASSPORT services in at least one county within COA's five county area, may apply for the same or equivalent services in ESP after twelve (12) consecutive months of providing PASSPORT service.

### **REQUIRED ELEMENTS:**

- 1.1 The Provider must disclose all entities with 5% or more ownership
- 1.2 The Provider must have a written statement defining the purpose of its business or service agency.
- 1.3 The Provider must have written policies.
- 1.4 The Provider must have written by-laws if it has a governing board; and if the Provider is incorporated it must have written articles of incorporation
- 1.5 The Provider must have a written table of organization which clearly identifies lines of administrative, advisory, contractual, and supervisory authority and responsibility to the direct care level. Any changes to the provider's table of organization must be provided to COA's Manager of Procurement and Provider Services or their designee at the time of change.
- 1.6 The Provider must have a signed current contract with any agency or persons with whom they subcontract to provide direct care services to ESP clients. Provider must incorporate requirements identified in the Elderly Services Program Provider Agreement (Agreement) with COA as part of any subcontract.
- 1.7 The Provider must not operate the business in violation of any applicable federal, state, or local laws and regulations or established guidelines of each county ESP as identified in the Agreement.
- 1.8 The Provider must supply evidence of the ability to meet all requirements of Elderly Services Programs for which it has an Agreement with COA.
- 1.9 The Provider shall disclose the identity and offense of any person or its principals who are presently or who become debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into the Provider Agreement by any state or federal department or agency. The term 'principal' defined as an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or

a person who has critical influence on or substantive control over the operations of the Provider's business. Provider shall notify COA immediately in the event it becomes aware of any such actual or proposed debarment, suspension, ineligibility, or voluntary exclusion. All such notifications are to be made to COA's Manager of Procurement and Provider Services or their designee.

- 1.10 The Provider, if being purchased by, or merged with, another entity (even if the purchasing/merging entity is a Provider with an existing ESP Agreement with COA ,and even if the Provider is the surviving entity), must furnish written notice to COA at least sixty (60) days prior to the effective merger or purchase date. Provider must not notify clients being serviced by Provider for COA of its intent to terminate its Agreement with COA until after it has notified COA, has provided COA with a copy of the notice it intends to send to ESP clients, and has received written authorization from COA to send the notice. Provider will assist Care Managers with transition of clients to another contracted COA Provider as necessary.
- 1.11 The Provider, if terminating its Agreement with COA, must furnish written notice to COA at least sixty (60) days prior to the effective termination date. Provider must not notify clients being serviced by Provider for COA of its intent to terminate its Agreement with COA until after it has notified COA, has provided COA with a copy of the notice it intends to send to ESP clients, and has received written authorization from COA to send the notice. Provider will assist Care Managers with transition of clients to another contracted COA provider as necessary.
- 1.12 The Provider must notify the Care Manager immediately upon determining, or has credible reason to believe, that a client/clients are no longer eligible for service(s). The expectation is that the Provider will advise the Care Managers when they have knowledge that a client is no longer eligible for service(s). The Provider will be responsible for notifying the Care Managers of the client/client's ineligibility as it is listed in the eligibility criteria.
- 1.13 The Provider must have a physical facility from which to conduct business that meets all zoning regulations for their location. COA must be notified of any change in location prior to the relocation.
- 1.14 To enable connection to the ESP Windows-based software used for Intake, Care Management, Request for Service ("RFS"), acceptance of service referrals, invoicing, and other related ESP activities, the Provider shall have, and maintain during the entire term of the Agreement, a computer, high speed Internet access (minimum DSL) and a printer, either connected directly to the computer used for accessing the Internet or available as part of a local area network.
- 1.15 The Provider must designate and utilize a locked storage space for the maintenance of all ESP client records and have a process to backup computer files including electronic verifications.

- 1.16 The Provider must have a primary business telephone listed under the name of the business, locally, and/or a toll free number available through directory assistance that allows for reliable, dependable and accessible communication.

## **CONDITION 2. ADMINISTRATIVE POLICIES**

- 2.0 The Provider must have and abide by written procedures supporting the operation of the business and service provision.

### **REQUIRED ELEMENTS:**

- 2.1 The Provider must have a system to document and support services delivered, received, and billed.
- 2.2 The Provider must carry and maintain the required insurance coverage as identified in the COA Provider Agreement. Provider shall furnish COA's Procurement and Provider Services Department with a Certificate of Insurance evidencing the required coverage.
- 2.3 The Provider must have a written procedure identifying steps clients must take to file an insurance claim.
- 2.4 The Provider must have a written procedure for follow-up and investigation of client complaints and grievances.
- 2.5 The Provider must have a written procedure which includes twenty-four (24) hour notification with a written follow-up report to Care Manager for reporting significant occurrences known to the Provider which affect a client's physical or emotional, well-being, or results in a significant change in the client's functional ability.
- 2.6 The Provider must obtain written approval from the ESP client to release client-specific information to sources outside the ESP system. The Provider must abide by HIPAA regulations as identified in the Provider Agreement.
- 2.7 The Provider must have a written policy to assure that all client information remains confidential.
- 2.8 The Provider must report any suspicion of abuse, neglect, and/or exploitation to the Care Manager, and to Adult Protective Services at the Ohio Department of Jobs and Family Services (ODJFS), according to section 5101.61 of the Ohio Revised Code.
- 2.9 The Provider must have a written procedure and supporting documentation of a quality improvement process for each contracted service including, but not limited to, client and employee chart auditing and client satisfaction.
- 2.10 The Provider must coordinate any community outreach activities including those involving the news media with COA's Communications Director prior to planning such activities. Outreach is defined as activities or services that specify or highlight COA.

- 2.11 Upon declaration of a disaster by the President, Governor or County Board of Commissioners, the Provider will cooperate with COA to assess the extent of the impact upon persons aged sixty (60) years and over and to coordinate the public and private resources in the field of aging in order to assist older disaster victims.

### **CONDITION 3. PERSONNEL REQUIREMENTS**

- 3.0 The Provider has written personnel policies and documentation that support personnel practices.

#### **REQUIRED ELEMENTS:**

- 3.1 The Provider must have written job descriptions or statements of job responsibilities which include qualifications (as applicable to service) for each position involved in the direct delivery of ESP services (employed or contracted). Volunteers must be provided an outline of their responsibilities.
- 3.2 The Provider must have a written policy for coaching and counseling for all individuals involved in direct delivery of ESP services (employed or contracted) to compliment and/or correct actions.
- 3.3 The Provider must have documentation signed and dated by each staff member indicating receipt of an employee handbook and completion of an orientation prior to providing service to ESP clients. COA understands the required orientation process may differ from one provider to another. The Provider must maintain documentation that the orientation includes:
  - 3.3.1 The Provider's purpose, policies and procedures, including, but not limited to:
    - a employee position description/expectations;
    - b agency personnel policies;
    - c reporting procedures and policies;
    - d agency table of organization; and
    - e lines of communication.
  - 3.3.2 Explanation of COA Code of Ethics\*, ESP program purpose and philosophy, Conditions of Participation, and applicable Service Specifications. \*Refer to Attachment A of this document.
- 3.4 The Provider must maintain a personnel file on every staff member and volunteer who provides service to ESP clients. This file must include:
  - 3.4.1 A resume or application for employment that includes a work history and training.
  - 3.4.2 Evidence of coaching/counseling per agency policy, signed and dated by the staff member. Coaching is defined as providing positive feedback about employee contributions. Counseling is defined as

bringing performance issues to an employee's attention and assisting the employee to correct them.

- 3.4.3 A resume or application for volunteers.
- 3.5 The Provider must, upon request of COA, furnish evidence that all subcontractors and their employees who provide services to ESP clients meet applicable personnel requirements.
- 3.6 The Provider shall not allow a staff person or volunteer to furnish a service to a client if the person is the client's spouse, parent, step-parent, legal guardian, power of attorney, or authorized representative.
- 3.7 The Provider must provide supervision to any volunteer in a direct care position.

#### **CONDITION 4. SERVICE DELIVERY**

- 4.0 The Provider must deliver services in compliance with the Service Specification(s), and in accordance with the plan designed and authorized by the Care Manager. Any change in service provision, especially changes in service units, must be authorized by the Care Manager.

##### **REQUIRED ELEMENTS:**

- 4.1 The Provider, when an award has been made to the agency, must initiate services based on Request-for-Service (RFS) or verbal requests (telephone) for service and/or equipment on the date specified or on a negotiated start date. Care Managers must be notified of any change in service start date.
- 4.2 As applicable, the Provider shall make all reasonable efforts to deliver services as authorized by the Care Manager.
  - 4.2.1 The Provider will consult with the client's Care Manager regarding any temporary increase or decrease in service delivery units authorized. Notification may be by telephone, email, or fax. No permanent change in service delivery can be made without consultation with the Care Manager. When the client and provider mutually agree to changes in service delivery dates which do not affect billing, no notification of Care Manager is required.
  - 4.2.2 In the event of a staff member's absence, the Provider must have and utilize a written backup plan that prioritizes client service needs and service to those in most need first.
  - 4.2.3 The Provider must maintain signed and dated documentation of each client contact affecting service provision and each Care Manager contact within the client record or on a designated log.

- 4.2.4 If the Provider initiates the discontinuation of service to an individual client, the Provider must notify the Care Manager in writing at least thirty (30) calendar days prior to the last day the Provider furnishes ESP service to an individual client. Provider must also notify the individual client in writing as soon as it notifies the care manager and an end date of service is agreed upon. In the event the client's or the Provider's employee health or safety is at risk, the client's Care Manager may make an exception and agree to fewer than thirty (30) days notice.
  - 4.2.5 The Provider must participate in Care Manager and Provider problem resolution to promote continuing service delivery prior to discharging a client (i.e., client initiated service changes). This may include case conferencing in person or telephone.
  - 4.2.6 The Provider must notify the Care Manager within twenty-four (24) hours of a known change in client status, needs, or location.
  - 4.2.7 The Provider must be able to provide twenty-four (24) hour response time to start of service(s) to new or existing high risk clients that have been discharged from an institution. It is not required that a provider provide services within twenty-four (24) hours on the weekend and holidays. The definition of a high risk client is a client who needs immediate start dates and assessments.
- 4.3 Major Unusual Incident (MUI) - The Provider must notify COA's Manager of Procurement and Provider Services or their designee of any MUI that impacts the Provider and/or any client served pursuant to the Provider Agreement. The notification shall be phoned or e-mailed to the Manager of Procurement and Provider Services within one (1) hour after the Provider becomes aware of the MUI. Provider agrees to furnish upon request of COA any reports relating to such incident and to cooperate with COA and/or its authorized representatives in any investigation of any major unusual incident.

An MUI is any alleged, or actual occurrence of an incident/event that could adversely affect the health or safety of a client, the credibility of Provider's staff or organization, or any incident in which COA or Provider may have liability. However, an MUI report must be made in the interim of the formal investigation and all reports are to be directed to COA's Manager of Procurement and Provider Services or their designee. MUIs include, but are not limited to: abuse; neglect; suspicious accident; death from abuse, neglect, serious injury, or any reason other than natural causes; criminal or suspected criminal acts; a police, court/legal, or public complaint which has the potential to be reported to the media or elected officials or any in which COA or Provider may have liability; lawsuit or potential lawsuit.

In case of an MUI, the provider must:

- 4.3.1 Notify COA's Manager of Procurement and Provider Services or their designee of any interruption in service to all clients or to a significant number of clients serviced by Provider.



- 4.3.2 If contacted by the news media regarding an MUI, the Provider is not to respond to the media inquiry, but must contact within one (1) hour COA's Communications Director by phone or by email.

## **CONDITION 5. COMPLIANCE**

- 5.0 The Provider must comply with all contract requirements, whether the provider furnishes services directly or by sub-contracting the services, Conditions of Participation, relevant Service Specification(s), monitoring and reporting requirements of COA, and billing requirements.

### **REQUIRED ELEMENTS:**

- 5.1 The Provider must furnish documentation demonstrating all requirements outlined in the applicable Service Specifications have been met when delivered, either directly or by subcontracting the service as identified in the Provider Agreement.
- 5.2 To the extent permitted by law, the Provider must allow representatives of COA and the County or their designee immediate access to the Provider facility and full access to policies, procedures, records, and other documents related to the provision of service to ESP clients. The Provider must cooperate with said representatives in periodic reviews.
- 5.3 The Provider must successfully maintain and comply with all provisions of the Agreement.
  - 5.3.1 The Provider must sign a Provider Agreement (including any Agreement amendments or extensions) with COA within the timeline specified at the time the Agreement is issued.
  - 5.3.2 The Provider must agree to accept reimbursement for service(s) rendered at the unit rate agreed upon with COA.
- 5.4 The Provider must bill COA, using a format established and approved by COA, on a monthly basis for only those units of service authorized and delivered.
- 5.5 The Provider must maintain dated documentation signed by the ESP client, caregiver, or COA approved electronic verification as required by Service Specifications. The agency must have documentation in the client's record when a client is unable to sign for service delivery with a reason client is unable to sign. Provision is then to be made for acceptance of the client's initials or signature of choice identified in the client's record.
- 5.6 The Provider may not bill any ESP client for authorized service(s) delivered or solicit the client for a donation except for Title III/ESP Home Delivered Meals.

- 5.7 The Provider shall annually provide to COA's Manager of Procurement and Provider Services a written statement that certifies that the Provider has paid all applicable federal, state, and local income and employment taxes.
- 5.8 The Provider shall retain all records necessary, and in such form, so as to fully disclose the extent of the services the Provider furnished and significant business transactions in accordance with the time period identified in the Agreement.

## **CONDITION 6. FREE DATABASE REVIEWS AND BCII CRIMINAL RECORDS CHECK**

- 6.0 The Provider shall conduct the six free database reviews and BCII criminal records check of all volunteers, applicants and existing employees providing direct care to ESP clients. Direct care is defined as any in-person contact with one or more clients who receive an ESP service or any access to an ESP client's personal property or personal records. The only exemption to this requirement will be in the case of Adult Day Services where volunteers are directly supervised and are not alone with a client.

### **REQUIRED ELEMENTS:**

#### 6.1 Free Database Reviews:

- 6.1.1 The Provider shall review the following six free databases before conducting the criminal records checks required under 6.2 for volunteers and applicants hired on or after August 1, 2013 and for all existing employees according to the schedule outlined under paragraph 6.2 of this condition.
- a SAM: The United States general services administration's system for award management, which is available at <https://www.sam.gov/>;
  - b OIG: The office of inspector general of the United States department of health and human services' list of excluded individuals, which is available at <http://exclusions.oig.hhs.gov/>;
  - c Abuser registry: The department of developmental disabilities' registry of employees who cited for abuse, neglect, or misappropriation, which is available at [https://its.prodapps.dodd.ohio.gov/ABR\\_Default.aspx](https://its.prodapps.dodd.ohio.gov/ABR_Default.aspx);
  - d Sex offender search: The Ohio attorney general's sex offender and child-victim offender database, which is available at <http://www.icrimewatch.net/index.php?AgencyID=55149&disc=>;
  - e Offender search: The department of rehabilitation and correction's database of inmates, which is available at <http://www.drc.ohio.gov/OffenderSearch/Search.aspx>; and,
  - f Nurse aide registry: The department of health's state nurse aide registry, which is available at [https://odhgateway.odh.ohio.gov/nar/nar\\_registry\\_search.aspx](https://odhgateway.odh.ohio.gov/nar/nar_registry_search.aspx).
- If the applicant or employee does not present proof that he or she has been a resident of Ohio for the five-year period immediately preceding the date of the database review, the

provider shall conduct a database review of the nurse aide registry in the state or states in which the applicant or employee lived.

- 6.1.2 The Provider shall not utilize a volunteer, employ an applicant, or continue to employ an employee in a position that involves providing direct-care services to an ESP client if:
  - a Any of the databases listed in paragraph 6.1.1a through 6.1.1e of this condition list the volunteer, applicant, or employee; or
  - b The database listed in paragraph 6.1.1f of this condition lists the volunteer, applicant, or employee as an individual who neglected or abused a long-term care facility resident or residential care facility resident or misappropriated such a resident's property.
  
- 6.1.3 If the Provider’s review of the six free databases listed under paragraph 6.1.1 of this condition discloses disqualifying information about a volunteer, applicant, or employee, the Provider shall inform the individual of the disqualifying information.
  
- 6.1.4 Employment-service exemption: A Provider that provides direct-care services is not required to review the free databases listed under paragraph 6.1.1 of this condition if the applicant or employee was referred to the provider by an employment service that refers applicants to responsible entities to fill full-time, part-time, or temporary positions involving direct care and the employment services provides the Provider with a report of the results of the review of the free databases that shows that the applicant or employee is not disqualified from direct-care employment.

6.2 Criminal records check is required for the following:

ON WHOM IS A CRIMINAL RECORDS CHECK REQUIRED			
DIRECT CARE POSITION WITH ESP CLIENTS	APPLICANTS FOR EMPLOYMENT and VOLUNTEER APPLICANTS	CURRENT EMPLOYEES <i>5 YEAR RECHECK</i>	CURRENT VOLUNTEERS <i>5 YEAR RECHECK</i>
Only delivers home-delivered meals	Yes	No	No
Only has access to client personal records	Yes	No	No
All other direct care	Yes*	Yes*	No
*Exception – Volunteers in Adult Day Services facilities where volunteers are directly supervised and are not alone with a client are not required to have criminal records check			

- 6.2.1 New applicants for paid positions and new volunteers:
- a The Provider shall conduct a BCII criminal records check on each applicant under final consideration for employment and on each individual applying to serve as a volunteer on or after August 1, 2013 in a direct-care position to serve an ESP client.
  - b The Provider shall do this even if paragraph 6.3 of this condition does not require the Provider to check the person as an employee.

6.2.2 Current employees:  
 At least once every five years: Except as provided for in paragraph 6.3 of this condition, the provider shall conduct a criminal records check on each employee who provides direct care at least once every five years according to one of the following three schedules:

- a **Employees hired on or prior to December 31, 2008:** If the provider hired the employee on or before December 31, 2008, the Provider shall conduct a criminal records check of the individual in 2013 according the following table and shall conduct a criminal records check at least every 5 years thereafter, no later than thirty days after the anniversary of the employee's date of hire.

Employee hired on or prior to December 31, 2008	
Month of hire is January through July	Month of hire is August through December
Provider shall conduct a criminal records check on the employee no later than December 31 2013,	Provider shall conduct a criminal records check of the individual no later than thirty days after the 2013 anniversary of the employee's date of hire,
and conduct a recheck no later than thirty days after each anniversary of the date of hire every five years after 2013	and conduct a recheck no later than thirty days after each anniversary of the date of hire every five years after 2013.
See example 1 below	See example 2 below

(Example 1 - For individuals with a date of hire between January 1, and July 31: If the Provider hired an employee on February 1, 2007, the Provider shall conduct a criminal records check on the employee no later than December 31 2013, and no later than thirty days after each anniversary of the date of hire for every five years after 2013, i.e. February 1, 2018, February 1, 2023, and so on every five years.)

(Example 2 - For individuals with a hire date between August 1 and December 31: if the Provider hired an employee on

September 13, 2007, the Provider shall conduct a criminal records check on the employee no later than thirty days after September 13, 2013, no later than thirty days after September 13, 2018, and no later than thirty days after September 13, 2023, and so on.)

- b **Employees hired January 1, 2009 and after:** If the Provider hired the employee on or after January 1, 2009, the Provider shall conduct a criminal records check of the employee no later than thirty days after the fifth anniversary of the employee's date of hire and no later than thirty days after each anniversary of the date of hire every five years after the first fifth-year anniversary of the date of hire.  
(Example - if the Provider hired an employee on February 1, 2011, the Provider shall conduct a criminal records check on the employee no later than thirty days after February 1, 2016, no later than thirty days after February 1, 2021, and so on.)
- c **More frequently than five years:** If the Provider conducts criminal records checks on an employee more frequently than every five years, the Provider is not responsible for conducting criminal records checks according to the five-year anniversaries of the employee's date of hire.

- 6.3 Exemptions: A Provider that provides direct-care services is not required to conduct the six free database reviews or the BCII five year criminal records check on a direct-care employee if the only type of direct care that the individual provides is:
  - a Delivering home-delivered meals;
  - b Having access to a client's personal records (e.g., an employee working in a Provider 's office who does not enter a client's home or an employee of a personal emergency response system's central monitoring station who does not enter a client's home); or,
  - c Providing services as a volunteer.
- 6.4 Reverification: If any person has requested a criminal records check of a volunteer, applicant, or employee in the past year, a provider may request a reverification of the criminal record from BCII. The reverification of a criminal records check has the same validity as a criminal records check.
- 6.5 Notification: The Provider shall inform each volunteer and applicant of the following at the time of initial application for a position to provide direct care (or referral to a Provider that provides direct-care services by an employment service):
  - a Free database reviews: The Provider is required to review the free databases to determine if the Provider is prohibited from utilizing the volunteer or employing the applicant in a direct-care position.
  - b Criminal records checks: Unless the free database reviews reveal that the applicant or volunteer may not be employed or utilized in a direct-care position:
    - (i) The Provider is required to conduct a criminal records check to determine if the Provider is prohibited from utilizing the volunteer or employing the applicant in a direct care position; and,

- (ii) The applicant is required to provide a set of the volunteer or applicant's fingerprint impressions as part of a criminal records check.
  - c Frequency: If the Provider utilizes the volunteer or employs the applicant, as a condition of continued employment, the provider shall conduct the free database reviews listed in 6.1.1 and shall request BCII criminal records checks to determine if the Provider is prohibited from employing the applicant in a direct-care position.
  - d Fees:
    - (i) If applicable, the fee required under paragraph 6.8 of this condition.
    - (ii) Any fees that are associated with obtaining fingerprint impressions.
- 6.6 FBI: If a volunteer, applicant, or employee does not furnish the Provider with evidence that he or she has been a resident of Ohio for the five-year period immediately preceding the date the Provider requests the criminal records check, or if the applicant does not provide the Provider with evidence that BCII has requested his or her criminal records from the FBI within that five-year period, the Provider shall request that BCII obtain information from the FBI as part of the criminal records check. Even if an applicant does furnish the Provider with evidence that he or she has been a resident of Ohio for the five-year period, the provider may request that BCII obtain information from the FBI as part of the criminal records check.
- 6.7 Forms and fingerprints:
  - 6.7.1 The Provider shall provide each volunteer or applicant with the form and fingerprint impression sheet required to conduct a criminal records check, which may be tangible, electronic, or both tangible and electronic.
    - a If the Provider requests that BCII include information from the FBI in the criminal records check report, the Provider shall also provide the volunteer or applicant with the form necessary to obtain the FBI's information; and,
    - b The Provider shall forward the completed form(s) and fingerprint impression sheet to BCII for processing.
  - 6.7.2 The BCII request must include the request is for working with the elderly – "providing direct care for older adults."
- 6.8 Investigation fees:
  - 6.8.1 The Provider shall pay BCII the fee prescribed for each criminal records check.
  - 6.8.2 The Provider may charge a volunteer or applicant a fee so long as the fee does not exceed the amount the Provider pays to BCII, but only if:
    - a The Provider notified the volunteer or applicant at the time of initial application of the amount of the fee and that, unless the fee was paid, the Provider would not consider the volunteer or applicant for employment; and,

- b The medical assistance program established under Chapter 5111 of the Revised Code does not reimburse the Provider for the fee.

6.8.3 The Provider may not charge an employee for the 5 year BCII recheck fee.

6.9 Employment-service exemption: A Provider that provides direct-care services is not required to request a criminal records check of an applicant or employee under paragraph 6.2 of this condition if the applicant or employee was referred to the Provider by an employment service that refers applicants to Providers to fill full-time, part-time, or temporary positions involving direct care and:

- a The employment service provides the Provider with a criminal records check report on the applicant or employee that was conducted no more than one year before the applicant's or employee's referral and the criminal records check report demonstrates that the applicant or employee was not convicted of a disqualifying offense; or, the report demonstrates that the applicant or employee was convicted of a disqualifying offense, but the Provider chooses to hire the applicant under paragraph 6.11 of this condition ; or,
- b The employment service or the applicant provides the Provider with a letter from the employment service, that is on the employment service's letterhead, that is dated and signed by a supervisor or another designated official of the employment service, and that states that the employment service has requested a criminal records check on the applicant, that the requested criminal records check will include a determination of whether the applicant has been convicted of a disqualifying offense, that, as of the date set forth on the letter, the employment service had not received the criminal records check report, and that, when the employment service receives the report, it promptly will send a copy of it to the Provider. If the Provider employs an applicant conditionally under this paragraph, it shall also comply with the requirements for conditional employment under paragraph 6.10 of this condition. .

6.10 Conditional employment:

6.10.1 The Provider shall only utilize a volunteer or hire an applicant before obtaining a criminal records check report if:

- a The Provider reviewed the free databases, and the free database reviews do not disqualify the volunteer or applicant;
- b The Provider utilizes the volunteer or hires the applicant on a conditional basis;
- c The Provider initiates the process of obtaining a criminal records check no later than five business days after the volunteer or applicant begins conditional employment; and,
- d The volunteer or applicant furnishes the Provider with a completed fingerprint impression sheet before the commencement of the individual's conditional employment.

6.10.2 Removal of conditionally-hired volunteers and applicants:

- a The Provider shall remove the volunteer or applicant from providing direct care to any ESP client if the provider does not receive a criminal records check report from BCII within the period ending sixty days after the provider requested it from BCII; or,
- b Regardless of when the results of the criminal records check are obtained, if the results indicate that the volunteer or applicant was convicted of, plead guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, the Provider shall remove the volunteer or employee from providing direct services to any ESP client unless the Provider hires the applicant under the terms of Paragraphs 6.11 through 6.13 of this condition. .

6.11 Disqualifying Offenses and exclusionary periods: Attachment B of the Conditions of Participation (this document) lists disqualifying offenses and required exclusionary periods. The Provider must refer to Attachment B to determine if the Provider may utilize a volunteer, employ or continue to employ an employee in a position involving providing direct care if that volunteer, applicant, or employee was convicted of or plead guilty to an offense listed in Attachment B of this document.

6.12 Certificates: Except for an individual with a disqualifying offense listed under Tier I of Attachment B of this document, a Provider may utilize a volunteer, hire an applicant, or continue to employ an employee who was issued either:

- a A 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;
- b A 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.

6.13 Pardons: A conviction or a plea of guilty to an offense listed or described in Attachment B of this document shall not prevent an applicant's employment or utilization of a volunteer under any of the following circumstances:

- a The volunteer, applicant, or employee was granted an unconditional pardon for the offense pursuant to Chapter 2967 of the Revised Code;
- b The volunteer, applicant, or employee was 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;
- c The conviction or guilty plea was set aside pursuant to law; or
- d The volunteer, applicant or employee was 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.

6.14 Records

6.14.1 Confidentiality: The Provider shall maintain the confidentiality of all criminal records check information, including information regarding



disqualifying offenses. The Provider shall not make a report available to any person other than:

- a Appropriate staff within the Provider's agency;
- b The volunteer, applicant, or employee who is the subject of the criminal records check;
- c The staff of the Council on Aging and/or their designee.

6.14.2 Records retention: Personnel files:

- a What to retain: for each volunteer and employee the Provider shall retain the following records:
  - (i) A copy of the result of each free database review required under paragraph 6.1 of this condition.
  - (ii) The original copy of any criminal records report or the original copy of any reverified criminal records report.
  - (iii) An official copy of a certificate of qualification for employment, if a court issued a certificate of qualification to the employee.
  - (iv) An official copy of a certificate of achievement and employability, if the department of rehabilitation and corrections issued a certificate of achievement and employability to the employee.
  - (v) An official copy of a pardon, if a governor pardoned the employee.
  - (vi) The date the Provider made a decision to utilize the volunteer or hired the employee.
- b Sealed files: To comply with paragraph 6.14.1 of this condition, the Provider shall retain the records required under paragraph 6.14.2a of this condition by sealing them within the personnel files or by retaining them in separate files from the personnel files.
- c Retain how long? The Provider shall retain the records and data identified in 6.14.2a during the entire term of their Agreement with COA and for at least six (6) years after termination of the employee or volunteer.

6.14.3 Roster: The Provider shall maintain a roster of applicants, employees, and volunteers that includes, but is not limited to:

- a The name of each applicant, employee, or volunteer.
- b The date the applicant, employee or volunteer started to work for the provider.
- c The date the criminal records check request was submitted to BCII.
- d The date the criminal records check was received.
- e A determination of whether the results of the check revealed that the applicant, employee or volunteer committed a disqualifying offense(s).

6.14.4 Records: The Provider, upon request, must make available to COA staff and or designee any records relating to free database reviews and BCII criminal records checks, including but not limited to personnel files and the roster.

# Attachment A

## CODE OF ETHICS

The service worker will treat all client/clients in a considerate and respectful manner.

The service worker will not:

- A. Use the client's personal property without the client's consent including telephone for personal calls.
- B. Consume the client's food and beverages.
- C. Eat food brought to the client's home without client's consent.
- D. Forge client's signature or falsify documentation.
- E. Bring friends, relatives, pets or any unauthorized individual to the client's home.
- F. Transport client away from home (unless authorized) or take the client to the provider's place of residence.
- G. Breach client's privacy or divulge client information.
- H. Consume alcoholic beverages, medicine, drugs, or other chemical substances not in accordance with the legal, valid, prescribed use and/or in any way that impairs the provider in the delivery of services to the client while in the client's home or prior to service delivery.
- I. Smoke in the client's home.
- J. Watch television, computer, play video games, or sit around and chat unless authorized by service specification.
- K. Steal, borrow, accept, obtain or attempt to obtain money or anything of value, including gifts or tips from the client, household members and family members of the client or caregiver.
- L. Discuss personal problems, religious or political beliefs with the client and others in the care setting.
- M. Engage in non-care related socialization with individuals other than the client.
- N. Provide care to individuals other than the client.
- O. Sleep at the client's residence.
- P. Engage in sexual conduct or in conduct that may reasonably be interpreted as sexual in nature, regardless of whether or not the contact is consensual with the client.

## Attachment A

- Q. Engage in behavior that may reasonably be interpreted as inappropriate involvement in the client's personal relationships.
- R. Engage in behavior that causes or may cause physical, verbal, mental or emotional distress or abuse to the client.
- S. Be designated to make decisions for the client in any capacity involving a declaration for mental health treatment, power of attorney, durable power of attorney, or guardianship.
- T. Sell or purchase from the client products or personal items. The only exception to this prohibition occurs when the client is a family member and the provider is not delivering services.
- U. Engage in behavior that constitutes a conflict of interest or takes advantage of or manipulates services contracted by COA, resulting in an unintended advantage for personal gain that has detrimental results for the client, the client's family or caregivers, or another provider.
- V. Leave the home for a purpose not related to the provision of services without notifying the agency supervisor, the client's emergency contact person, any identified caregiver, and/or the client's care manager, or, for client-directed service providers, leave the home without the consent and/or knowledge of the client.
- W. Extend the relationship with the client beyond the specific service boundaries that have been established by the applicable service specification(s).
- X. Engage in a disagreement with the client but will, instead, seek to improve communication and express willingness to work together constructively. In the event of a disagreement the Care Manager is to be contacted immediately. The definition of disagreement is a failure or refusal to agree which may escalate into a conflict or quarrel.
- Y. Deny service to a client due to the client's living conditions including pest, health, behavior or language. COA does make the distinction between behavior and language that are the result of a condition verses someone who consistently displays inappropriate, intolerable behavior/language or threatening behavior/language. Providers must comply with OSHA standards and the Fair Labor Standards Act for employees. Inappropriate behavior does include inappropriate touching. Language as referenced in section Y does not refer to languages that are not English.

## Attachment B

### CRIMINAL RECORDS CHECK TIER REFERENCES

**Tier I: Permanent exclusion:** No provider shall utilize a volunteer, employ an applicant or continue to employ an employee in a position involving providing direct care to an ESP client, if the individual was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code:

2903.01	Aggravated murder
2903.02	Murder
2903.03	Voluntary manslaughter
2903.11	Felonious assault
2903.15	Permitting child abuse
2903.16	Failing to provide for a functionally-impaired person
2903.34	Patient abuse or neglect
2903.341	Patient endangerment
2905.01	Kidnapping
2905.02	Abduction
2905.32	Human Trafficking
2905.33	Unlawful conduct with respect to documents
2907.02	Rape
2907.03	Sexual battery
2907.04	Unlawful sexual conduct with a minor, formerly corruption of a minor
2907.05	Gross sexual imposition
2907.06	Sexual imposition
2907.07	Importuning
2907.08	Voyeurism
2907.12	Felonious sexual penetration
2907.31	Disseminating matter harmful to juveniles
2907.32	Pandering obscenity
2907.321	Pandering obscenity involving a minor
2907.322	Pandering sexually-oriented matter involving a minor
2907.323	Illegal use of a minor in nudity-oriented material or performance
2909.22	Soliciting or providing support for an act of terrorism
2909.23	Making terroristic threats
2909.24	Terrorism
2913.40	Medicaid Fraud

If related to another offense of this rule, 2923.01(conspiracy), 2923.02 (attempt). Or 2923.03 (complicity);

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)

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 Tier I offenses or violations described above.

## Attachment B

**Tier II: Ten-Year exclusionary period:** No provider shall utilize a volunteer, employ an applicant or continue to employ an employee in a position involving providing direct care to an ESP client for a period of ten years from the date the individual was fully discharged from all imprisonment, probation or parole; if the individual was convicted of, or plead guilty to, an offense in any of the following sections of the Revised Code:

- 2903.04 Involuntary manslaughter
- 2903.041 Reckless homicide
- 2905.04 Child stealing, as it existed before July 1, 1996
- 2905.05 Child enticement
- 2905.11 Extortion
- 2907.21 Compelling prostitution
- 2907.22 Promoting prostitution
- 2907.23 Enticement or solicitation to patronize a prostitute; procurement of a prostitute for another
- 2909.02 Aggravated arson
- 2909.03 Arson
- 2911.01 Aggravated robbery
- 2911.11 Aggravated burglary
- 2913.46 Illegal use of SNAP or WIC program benefits
- 2913.48 Worker's compensation fraud
- 2913.49 Identity fraud
- 2917.02 Aggravated riot
- 2923.12 Carrying concealed weapons
- 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
- 2923.123 Illegal conveyance, possession, or control of deadly weapon or ordnance into a courthouse
- 2923.13 Having weapons while under disability
- 2923.161 Improperly discharging a firearm at or into a habitation or school
- 2923.162 Discharge of firearm on or near prohibited premises
- 2923.21 Improperly furnishing firearms to a minor
- 2923.32 Engaging in a pattern of corrupt activity
- 2923.42 Participating in a criminal gang
- 2925.02 Corrupting another with drugs
- 2925.03 Trafficking in drugs
- 2925.04 Illegal manufacture of drugs or cultivation of marijuana
- 2925.041 Illegal assembly or possession of chemicals for the manufacture of drugs
- 3716.11 Placing harmful or hazardous objects in food or confection

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

Or, a violation of an existing or former municipal ordinance or law of this state, any other state, or United States that is substantially equivalent to any of the Tier II offenses or violations described above.

## Attachment B

If a volunteer, applicant, or employee was convicted of multiple disqualifying offenses, including an offense listed under Tier II, and another offense or offenses listed in under Tier II, Tier III and Tier IV of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act, the individual is subject to a fifteen-year exclusionary period.

**Tier III: Seven-Year exclusionary period:** No provider shall utilize a volunteer, employ an applicant, or continue to employ an employee in a position involving providing direct care to an ESP client for a period of seven years from the date the individual was fully discharged from all imprisonment, probation or parole; if the individual was convicted of, or plead guilty to, an offense in any of the following sections of the Revised Code:

- 959.13 Cruelty to animals
- 959.131 Prohibitions concerning companion animals
- 2903.12 Aggravated assault
- 2903.21 Aggravated assault
- 2903.211 Menacing by stalking
- 2905.12 Coercion
- 2909.04 Disrupting public services
- 2911.02 Robbery
- 2911.12 Burglary
- 2913.47 Insurance Fraud
- 2917.01 Inciting to violence
- 2917.03 Riot
- 2917.31 Inducing panic
- 2919.22 Endangering children
- 2919.25 Domestic violence
- 2921.03 Riot
- 2921.11 Perjury
- 2921.13 Falsification, falsification in a theft offense, falsification to purchase a firearm, or falsification to obtain a concealed handgun license
- 2921.34 Escape
- 2921.35 Aiding escape or resistance to lawful authority
- 2921.36 Illegal conveyance of weapons, drugs, or other prohibited items onto the grounds of a detention facility or institution
- 2925.05 Funding drug trafficking
- 2925.06 Illegal administration of distribution of anabolic steroids
- 2925.24 Tampering with drugs
- 2927.12 Ethnic intimidation

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

Or, a violation of an existing or former municipal ordinance or law of this state, any other state, or United States that is substantially equivalent to any of the Tier III offenses or violations described above.

## Attachment B

If a volunteer, applicant, or employee was convicted of multiple disqualifying offenses, including an offense listed under Tier III, and another offense or offenses listed in under Tier III and Tier IV of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act, the individual is subject to a ten-year exclusionary period.

**Tier IV: Five-Year exclusionary period:** No provider shall utilize a volunteer, employ an applicant, or continue to employ an employee in a position involving providing direct care to an ESP client for a period of five years from the date the individual was fully discharged from all imprisonment, probation or parole; if the individual was convicted of, or plead guilty to, an offense in any of the following sections of the Revised Code:

- 2903.13 Assault
- 2903.22 Menacing
- 2907.09 Public indecency
- 2907.24 Soliciting, engaging in solicitation after a positive HIV test
- 2907.25 Prostitution
- 2907.33 Deception to obtain matter harmful to juveniles
- 2911.13 Breaking and entering
- 2913.02 Theft
- 2913.03 Unauthorized use of a vehicle
- 2913.04 Unauthorized use of computer, cable, or telecommunication property
- 2913.05 Telecommunications fraud
- 2913.11 Passing bad checks
- 2913.21 Misuse of credit cards
- 2913.31 Forgery, forging identification cards
- 2913.32 Criminal simulation
- 2913.41 Defrauding a rental agency or hostelry
- 2913.42 Tampering with records
- 2913.43 Securing writings by deception
- 2913.44 Personating an officer
- 2913.441 Unlawful display of law enforcement emblem
- 2913.45 Defrauding creditors
- 2913.51 Receiving stolen property
- 2919.12 Unlawful abortion
- 2919.121 Unlawful abortion upon minor
- 2919.123 Unlawful distribution of an abortion-inducing drug
- 2919.23 Interference with custody
- 2919.24 Contributing to the unruliness or delinquency of a child
- 2921.12 Tampering with evidence
- 2921.21 Compounding a crime
- 2921.24 Disclosure of confidential information
- 2921.32 Obstructing justice
- 2921.321 Assaulting or harassing a police dog, horse, or service animal
- 2921.51 Impersonation of peace officer

## Attachment B

- 2925.09 Illegal administration, dispensing, distribution, manufacture, possession, selling, or using any dangerous veterinary drug
- 2925.11 Drug possession, unless a minor drug possession offense
- 2925.13 Permitting drug above
- 2925.22 Deception to obtain a dangerous drug
- 2925.23 Illegal processing of drug documents
- 2925.36 Illegal dispensing of drug samples
- 2925.55 Unlawful purchase of a pseudoephedrine product, underage purchase of a pseudoephedrine product, using false information to purchase a pseudoephedrine product, improper purchase of a pseudoephedrine product
- 2925.56 Unlawfully selling a pseudoephedrine product unlawfully selling a pseudoephedrine product to a minor; improper sale of a pseudoephedrine product);

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

Or, 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 Tier IV offenses or violations described above.

If a volunteer, applicant, or employee was convicted of multiple disqualifying offenses, including an offense listed under Tier IV, and another offense or offenses listed in under Tier IV of this rule, and if the multiple disqualifying offenses are not the result of, or connected to, the same act, the individual is subject to a seven-year exclusionary period.

**Tier V: No exclusionary period:** A provider may utilize a volunteer, employ an applicant, or continue to employ an employee involving providing direct care to an ESP client if the individual was convicted of, or pleaded guilty to, an offense in any of the following sections of the Revised Code:

- 2925.11 Drug possession, but only if a minor drug possession offense
- 2925.14 Illegal use, possession, dealing, selling, or advertising of drug paraphernalia
- 2925.141 Illegal use or possession of marijuana drug paraphernalia

Or, 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 Tier V offenses or violations described above.