

Policy 9.11

POLICY TITLE: CRIMINAL HISTORY CHECKS	POLICY # 9.11		
Topic Area: CORPORATE COMPLIANCE Applies to: LRE Board Members, LRE Staff, CMHSP Participants and Medicaid Network Providers Developed and Maintained by: CEO and Designee Supersedes: N/A	ISSUED BY: CEO APPROVED BY: Board of Directors Effective Date: August 18, 2016	REVIEW DATES	
		8/18/2016	
		7/22/22	
		7/21/23	
		Revised Date: 7/22/2023	

I. PURPOSE

The purpose of the policy is to comply with federal and state mandates to assure that access to and services performed for consumers are provided by individuals who are permitted by law and are qualified to perform the services.

II. POLICY

Lakeshore Regional Entity (LRE), member Community Mental Health Service Providers (CMHSP) and provider entities will conduct criminal history checks prior to hire, contracting, and/or service. LRE and CMHSPs will not employ, independently contract with or grant clinical privileges to if the individual will regularly have direct access to or provide direct services to consumers, and the individual is prohibited by law from having the access or performing the services due to a criminal conviction. Criminal history checks will occur at time of hire or contract initiation, and minimally every two years thereafter.

LRE, its member CMHSPs, and contracted providers will not employ, contract with, authorize services for, reimburse services for, or seek reimbursement for services delivered, prescribed, or ordered by any individual if:

- A. The individual has received a criminal history check that indicates a mandatory disqualifying conviction listed in Subdivision (1) in the table below (42 USC 1320a-7(a));
- B. The individual has been the subject of a substantiated finding as described in Subdivision (8) in the table below;
- C. The individual has direct access, or provides direct services, to consumers in a prescribed setting (inpatient psychiatric, specialized residential) and the individual has received a criminal history check indicating a time-limited disqualifying conviction for which the time limitation has not yet been satisfied (listed in Subdivisions 2-7 in the table below) (MCL 20173a, MCL 330.1134a, MCL 400724b);
- D. The individual is being considered or is currently employed as a Behavior Technician and the criminal history check reveals any criminal conviction for the individual (MCL 333.18263(1)(a)).

Background Checks

- A. **Specialized Residential and Psychiatric Inpatient settings:** Inpatient psychiatric facilities and licensed adult foster care homes shall follow Michigan Department of Health and Human Services (MDHHS) Michigan Workforce Background Check procedures for obtaining criminal background checks and fingerprints (MCL 2333.20173a; MCL 330.1134a; MCL 400.734b). The Workforce Background Check system alerts employers to ongoing criminal activity, so biannual re-checks of criminal history status are not necessary.
- B. **LRE and all other settings:** Entities shall ensure its background checks are completed by an organization, service, or agency that specializes in gathering the appropriate information to review the complete history of an individual. Use of the state of Michigan Offender Tracking Information System (OTIS) or a county level service that provides information on individuals involved with the court system are not appropriate resources to use for criminal background checks.
1. Entities shall secure written consent from individuals who apply for employment, contracting or volunteering, at the time of application, for the entity to conduct a criminal history check.
 2. Background check documentation shall be maintained in the employee record and shall include the following (which shall be updated every two years for those individuals having direct access or providing services to customers):
 - a. OIG exclusion verifications to ensure no mandatory disqualifying convictions from 42 USC 1320a-7(a), or other exclusions.
 - b. Queries for state offenses committed in the state of Michigan.
 - c. If the individual has resided in any other state in the 5 years prior to application, or since age 16, whichever is less, queries of those states' criminal background systems (required for initial background check only, unless the individual resides part-time in another state).
 - d. A statement signed by the individual that indicates the following:
 - e. That he or she has not been the subject of a substantiated finding as described in Subdivision (8) of the table below.

Reporting

1. **LRE INTERNAL:** All employees, directors, managers, and individuals with any other type of employment or consulting arrangement with LRE are required to report the following to LRE Human Resources Designee within five (5) days of conviction or assessment imposition:
 - i. Any criminal conviction, felony or misdemeanor; and/or
 - ii. The imposition of civil money penalties or assessments imposed under section 1128 A of the Social Security Act.
2. **EXTERNAL:** Criminal conviction results are to be disclosed to LRE by participant

CMHSPs and providers with regard to those offenses as detailed in sections 1128(a) and 1128(b)(1), (2), or (3) of the Social Security Act, or that have had civil money penalties or assessments imposed under section 1128A of the Act.

3. **MDHHS:** LRE will notify the MDHHS Behavioral Health and Developmental Disabilities Administration (BHDDA) Division of Program Development, Consultation and Contracts when disclosures are made by providers with regard to any offenses detailed in sections 1128(a) and 1128(b) (1), (2) or (3) of the Social Security Act, or that have had civil money penalties or assessments imposed under section 1128A of the Act.

Compliance

1. Although criminal background checks are required, it is not intended to imply that a criminal record will necessarily bar employment. The verification of these checks and justification for the decisions that are made should be documented in the employee personnel or interview file. Decisions must be consistent with state and federal rules and regulations regarding individuals with a criminal history.

Table of Disqualifying Convictions

1. For purposes of this policy, Subdivisions (1) and (8) apply to LRE, member CMHSPs, and providers.
2. Subdivisions (2) through (7) apply to personnel working in inpatient psychiatric and specialized residential settings.
3. Subdivisions 2-8: Disqualifications related to MCL333.20173a, MCL330.1134a and MCL 400.734b
4. Subdivision (9) applies only to individuals being considered for or employed as Behavior Technicians delivering applied behavior analysis services. An individual who is not licensed or authorized to practice a profession under this part (MCL 333.18251-Act 368 of 1978, Part 182A) and who delivers applied behavior analysis services under the delegation and supervision of a behavior analyst and meets the requirements of section 18263.

Mandatory and Time-limited disqualifications are described in part in the table below.

Subdivision 1 - Mandatory Disqualifications Persons with the following convictions are excluded from participating in Medicare and State health care programs
1. Any criminal convictions related to the delivery of an item or service under Medicare {Title XVIII}, Medicaid (Title XIX) or other state health care programs (e.g., Children's Special Health Care Services, Healthy Kids), (Title V, Title XX, and Title XXI).
2. Any criminal convictions under federal or state law, relating to neglect or abuse of patients in connection with the delivery of a health care item or service.

3. Felony convictions occurring after August 21, 1996, relating to an offense, under federal or state law, in connection with the delivery of health care items or services or with respect to any act or omission in a health care program (other than those included in number 1 above) operated by or financed in whole or in part by any federal, state, or local government agency, of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.
4. Felony convictions occurring after August 21, 1996, under federal or state law, related to unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.
Subdivision 2 - Time-Limited Disqualifications Time Requirement*: 15 years
1. A felony that involves the intent to cause death or serious impairment of a body function, that results in death or serious impairment of a body function, that involves the use of force or violence, or that involves the threat of the use of force or violence
2. A felony involving cruelty or torture.
3. A felony under chapter XXA of the Michigan penal code, 1931PA328, MCL750.145m to 750.145r (Vulnerable Adults chapter).
4. A felony involving criminal sexual conduct.
5. A felony involving abuse or neglect.
6. A felony involving the use of a firearm or dangerous weapon.
7. A felony involving the diversion or adulteration of a prescription drug or other medications.
Subdivision 3 - Time-Limited Disqualifications Time Requirement*: 10 years
C. Other felony or attempt or conspiracy to commit felony, other than those described under Subdivision 1 and 2.
Subdivision 4 - Time-Limited Disqualifications Time Requirement*: 10 years
1. A misdemeanor involving the use of a firearm or dangerous weapon with the intent to injure, the use of a firearm or dangerous weapon that results in a personal injury, or a misdemeanor involving the use of force or violence or the threat of the use of force or violence.
2. A misdemeanor under chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r (Vulnerable Adults chapter).
3. A misdemeanor involving criminal sexual conduct
4. A misdemeanor involving cruelty or torture unless otherwise provided under Subdivision 5.
5. A misdemeanor involving abuse or neglect.
Subdivision 5 - Time-Limited Disqualifications Time Requirement*: 5 years
1. A misdemeanor involving cruelty if committed by an individual who is less than 16 years of age.

2. A misdemeanor involving home invasion.
3. A misdemeanor involving embezzlement
4. A misdemeanor involving negligent homicide or a violation of section 601d (1) of the Michigan vehicle code, 1949 PA 300, MCL 257.601d.
5. A misdemeanor involving larceny unless otherwise provided under Subdivision 7.
7. Any other misdemeanor involving assault, fraud, theft, or the possession or delivery of a controlled substance unless otherwise provided under Subdivision 4, 6, or 7.
Subdivision 6 - Time-Limited Disqualifications Time Requirement*: 3 years
1. A misdemeanor for assault if there was no use of a firearm or dangerous weapon and no intent to commit murder or inflict great bodily injury.
2. A misdemeanor of retail fraud in the third degree unless otherwise provided under Subdivision 7.
3. A misdemeanor under part 74 (MCL 333.74 - offences related to controlled substances) unless otherwise provided under Subdivision 7.
Subdivision 7 - Time-Limited Disqualifications Time Requirement*: 1 year
1. A misdemeanor under part 74 (MCL 333.74 - offences related to controlled substances) if the individual, at the time of conviction, is under the age of 18.
2. A misdemeanor for larceny or retail fraud in the second or third degree if the individual, at the time of conviction, is under the age of 16.
Subdivision 8 - These individuals are Excluded from participating as a service provider
1. Engages in conduct that becomes the subject of a substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency pursuant to an investigation conducted in accordance with 42 USC 1395i-3 (Requirements for, and assuring quality of care in, skilled nursing facilities) or 1396r (Requirements for nursing facilities).
Subdivision 9 – These individuals are Excluded from working as Behavior Technician providing applied behavior analysis services.
1. Any misdemeanor or felony conviction. Criminal history check must not obtain any convictions.

** Time requirement means the time required for completing all terms and conditions of sentencing, parole, and probation for the conviction prior to the date of application for employment or clinical privileges.*

III. APPLICABILITY AND RESPONSIBILITY

This policy applies to LRE staff and operations, member CMHSPs, and all network providers.

IV. MONITORING AND REVIEW

The CEO and Designee will review this policy on an annual basis.

V. DEFINITIONS

Direct Access: Access to a consumer or a consumer’s property, financial information, medical records, treatment information, or any other identifying information.

Employee/Staff: An individual who is directly engaged by LRE, a member CMHSP or network provider including employees, contractors, volunteers, interns, and any other staff.

Conviction: For the purpose of the laws mentioned above, an individual or entity is considered to have been convicted of a criminal offense when:

1. A judgement of conviction has been entered against the individual or entity by a federal, state or local court, regardless of whether there is an appeal pending or whether judgement of conviction or other record relating to the criminal conduct has been expunged,
2. A finding of guilt against the individual or entity by a federal, state or local court,
3. A plea of guilty or nolo contendere by the individual or entity has been accepted by a federal, state, or local court or
4. An individual or entity that has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld.

VI. RELATED POLICIES AND PROCEDURES

- A. LRE Corporate Compliance Plan
- B. Corporate Compliance Policy and Procedures
- C. Human Resource Policy and Procedures

VII. REFERENCES/LEGAL AUTHORITY

- A. 42 U.S.C. 13 20A-7
- B. MCL333.1134a
- C. MCL400.734b
- D. MCL333.20173a
- E. MCL333.18263
- F. 42 CFR 441.570
- G. MDHHS Medicaid Managed Specialty Supports and Services Contract

VIII. CHANGE LOG

Date of Change	Description of Change	Responsible Party
06/26/2014	New Policy	Chief Compliance Officer
7/22/2022	Annual Policy Update	Chief Compliance Officer
7/22/2023	Annual Policy Update	CEO and Designee