

# ORGANIZATIONAL PROCEDURE

<b>PROCEDURE TITLE:</b>	<b>CRIMINAL HISTORY CHECKS</b>		
<b>Topic Area:</b>	<b>CORPORATE COMPLIANCE</b>		<b>REVIEW DATES</b>
<b>Related Policies:</b>	Corporate Compliance, Human Resources, Financial		
<b>Applies to:</b>	LRE Staff and Operations, LRE Provider Network, and Member CMHSPs	<b>ISSUED BY:</b> Chief Executive Officer	
<b>Review Cycle:</b>	Annually		
<b>Developed and Maintained by:</b>	Compliance Officer	<b>APPROVED BY:</b>	
<b>Supersedes:</b>	N/A	<b>Effective Date:</b> 7/22/22	<b>Revised Date:</b> July 22, 2022

## I. PURPOSE

The purpose of the procedure is to assure that access to and services performed for consumers are provided by individuals who are permitted by law to perform the services and that criminal history checks are conducted in accordance with federal and state law.

## II. PROCEDURES

A. **Conducting Criminal History Checks for Employees.** Criminal history checks are conducted and managed by Lakeshore Regional Entity (LRE) and each Community Mental Health Service Provider (CMHSP) participant for their respective employees. The term “employee” is defined to include individual independent contractors, see Definitions Section.

1. **Designated Specialist.** LRE and each CMHSP will designate one or more professional-level employees with experience or training in conducting criminal history checks who will have primary responsibility for criminal history checks for employees, including determining the scope of criminal history checks, conducting criminal history checks, making recommendations on results, and communicating appropriate information to management and the employee or applicant. The designated employee is referred to as a specialist in this policy, see Definitions Section. The specialist will have initial and ongoing training, including on all systems used in conducting criminal history checks and legal requirements. The specialist will develop and maintain written procedures used in conducting criminal history checks and a list of positions that have been determined to require a criminal history check. The specialist will assure that position materials available to individuals contain a separate written notice that a criminal history check will be required for employment.
2. **Facilities Covered by the Michigan Workforce Background Check Program.** Criminal history checks for employees and applicants of adult foster care facilities and home for the aged facilities, are conducted in the Michigan

Workforce History Check Program. The Program includes searches of the U.S. Health and Human Services Medicare and Medicaid Exclusion List (OIG), the Michigan Nurse Aid Registry (NAR), the Michigan Public Sex Offender Registry (PSOR), the Michigan Offender Tracking Information System (OTIS), and state and federal fingerprint-based registries. Specialists use the forms and follow the procedures provided by the Program and available in the MDHHS Background Check Website Orientation Manual **07-2010** at Michigan.gov.

3. All Other Facilities. Criminal history checks for employees and applicants of other facilities are conducted under written procedures that include the following steps:
  - a. Secure Consent. Obtain a written consent from individuals authorizing a criminal history check.
  - b. Determine Scope of Search. A social security number validation and trace is conducted. The results of a social security trace will be used along with information gathered from other sources (e.g., resume and employment history) to determine the scope of the criminal history check.
  - c. Search Records. A criminal history check will be conducted, and will include federal criminal records, criminal records of the states where the individual has resided or worked, and state and federal fingerprint-based registries. Alternatively, LRE or a CMHSP may obtain criminal history record information from the Michigan Department of Licensing and Regulatory Affairs if a criminal history check was conducted regarding the individual during the immediately preceding 12-month period, the individual was continuously employed by a psychiatric facility, adult foster care facility or a staffing agency since the criminal history check was conducted, and the individual can provide evidence that he or she has been a resident of the State of Michigan for the immediately preceding 12-month period.
4. Review Results. The specialist will review results of criminal history checks to determine if individuals are prohibited by law from performing position responsibilities due to criminal convictions.
  - a. If no criminal record is identified, the individual has met the standard for employment.
  - b. If a criminal record is identified, and the individual is prohibited by law from performing position responsibilities, the individual has not met the standard for employment, and will be notified of the tentative adverse decision as provided in Section 5.
  - c. If a criminal record is identified, and the individual is *not* prohibited by law from performing position responsibilities, the specialist will make a recommendation as to whether the criminal record is substantially related to the position. The determination of whether the criminal record is substantially related to the position will be made, in the case of employees of LRE, by the Chief Compliance Officer of and two members of the senior management staff

of LRE and, in the case of employees of a CMHSP, by the Chief Compliance Officer of LRE and two members of the senior management staff of the CHMSP. Both the recommendation and the determination will be made by reviewing the nature, severity, timing and intentionality of the criminal offense, the duties and responsibilities of the position and the individual's recent record of employment performance. If a determination is made that the criminal record is not substantially related to the position, the individual has met the standard for employment. If a determination is made that the criminal record is substantially related to the position, the individual has not met the standard for employment, and will be notified of the tentative adverse decision as provided in Section 5.

5. Tentative Adverse Decision. If a decision is tentatively made not to hire an individual based in whole or in part on a criminal record, the specialist will notify the individual using the form set forth at [FORM LINK] that they may be denied the position based on the results of the criminal history check, and will include a copy of the criminal report and the publication "A Summary of Your Rights Under the Fair Credit Reporting Act" using the form set forth at <https://www.consumer.ftc.gov/articles/pdf-0096-fair-credit-reporting-act.pdf>. The individual will have the opportunity to contact the specialist and provide an explanation of the items on the criminal report, and has the right to appeal to the appropriate Michigan department if the individual believes the criminal record is inaccurate or incomplete.
6. Final Adverse Action. If a final decision is made not to hire an individual based in whole or in part on a criminal record, the specialist will notify the individual using the form set forth at [FORM LINK].
7. Conditional Employment. If LRE or a CMHSP determines that it is necessary to employ an applicant before receiving the results of the criminal history check, LRE or a CMHSP may conditionally employ the applicant if the criminal history check has been requested, the applicant is supervised by an individual who has undergone a criminal history check, and the applicant signs a statement in the form set forth at [FORM LINK].
8. Record Retention. The following records will be maintained for a period of seven (7) years after the position has been filled: signed consent forms (including original/initial form), records resulting from criminal history checks, analysis and determination as to whether a criminal record is substantially related to a position, related correspondence and other records that establish compliance with criminal history check requirements.
9. Confidentiality. Information obtained through criminal history checks will be maintained confidentially to the extent allowed by law, will be used only for the purpose of evaluating the individual's qualifications for employment, and will not be disclosed to any person who is not directly involved in evaluating the individual's qualifications for employment. Records will be retained in a secure

location separate from the individual's personnel file. Alternatively, records may be retained in an on-line vendor's data base.

10. Costs. LRE and CMHSPs will not charge or seek reimbursement from an employee or applicant for costs associated with criminal history checks.
11. Updating Criminal Background Checks. Notice of new criminal records are provided automatically for those checks conducted in the Michigan Workforce Background Check Program. All other criminal history checks will be repeated at least every two years.

**B. Conducting Criminal History Checks for Individuals Under Subcontracts.** LRE and CMHSPs will require that their respective subcontractors, including staffing agencies, conduct criminal history checks as required by law on all individuals who regularly have direct access to or provide direct services to consumers under contracts with LRE or a CMHSP. LRE and CMHSPs will require their respective subcontractors to:

1. Maintain written policies and procedures on criminal history checks that include, at a minimum, requirements of federal and state law with respect to criminal history checks.
2. Comply with such written policies and procedures and requirements of federal and state law with respect to criminal history checks.
3. Submit information regarding criminal history checks conducted by the subcontractor to LRE or the CMHSP.
4. Retain responsibility for conducting criminal history checks and for communicating with individuals who are the subject of criminal history checks conducted by the subcontractor.
5. Retain legal liability for criminal history checks and personnel decisions with respect to individuals who are or may be employed or contracted by subcontractors.

**C. Granting Clinical Privileges** with respect to inpatient psychiatric facilities, the LRE or a CMHSP will assure that its credentialing process for granting clinical privileges to health care professionals includes written procedures for conducting criminal history checks as provided in Section A, to the extent applicable, and otherwise in compliance with federal and state laws with respect to criminal history checks.

### **III. APPLICABILITY AND RESPONSIBILITY**

This procedure applies to LRE staff and operations, member CMHSPs, the LRE provider network and all lines of business.

### **IV. MONITORING AND REVIEW**

The Chief Compliance Officer, in consultation with the Chief Executive Officer, will review this procedure on an annual basis.

## V. DEFINITIONS

**Consumers:** Patients or residents in a specialized residential facility, adult foster care facility or a psychiatric inpatient facility operated directly or indirectly by LRE or a CMHSP.

**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.

**Specialist:** A professional-level employee with experience or training in conducting criminal history checks who has been designated by LRE or a CMHSP to have primary responsibility for criminal history checks for employees of LRE or the CMHSP.

**Staffing Agency:** An entity that recruits candidates and provides temporary and permanent qualified staff to a facility operated by LRE or a CMHSP.

## VI. RELATED POLICIES AND PROCEDURES

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

## VII. REFERENCES/LEGAL AUTHORITY

- A. 42 U.S.C. 13 20a-7
- B. MCL 333.1134a
- C. MCL400.734b
- D. MCL 333.20173a
- E. MCL333.18263
- F. 42 CFR 441.570
- G. Michigan Medicaid Manual
- H. DHHS Medicaid Specialty Supports and Services Contract

## VIII. CHANGE LOG

Date of Change	Description of Change	Responsible Party
7/22/22	New procedure	Chief Compliance Officer