BERRIEN MENTAL HEALTH AUTHORITY
PROCEDURE

SUBJECT: CRIMINAL HISTORY SCREENING FOR PROVIDERS	SECTION: 07-50-05 Page 1 of 6
APPLICATIONS: All Service Contract Providers and BMHA Staff EFFECTIVE DATE: April, 2016 REVISED: 3/18, 6/19, 2/2020, 3/2022, 6/2023	REQUIRED BY: Social Security Act Michigan Compiled Laws SWMBH Policy 2.16 MDHHS

POLICY
It is the policy of Berrien Mental Health Authority (BMHA) that all individuals who have direct access or provide services to consumers will be screened for criminal history prior to employment and minimally every 2 years thereafter.

When services are provided in a specialized residential setting, background checks shall be requested by the contracted service provider through the Michigan Workforce Background Check System, as required by MCL 330.1134a and MCL 400.734b. Individuals with disqualifying convictions may not provide services or have direct access to BMHA consumers when services are provided in a specialized residential setting.

BMHA may not employ, contract with, authorize services for, or reimburse services for any individual who has direct access or provides services to consumers if the individual has received a criminal history screening indicating a disqualifying conviction.

PURPOSE
To comply with federal and state mandates and to enact necessary safeguards to protect the health and welfare of consumers receiving services, to assure qualified providers are performing services, and to avoid risk exposure to BMHA and contracted service providers.

DEFINITIONS
Behavior Technician means 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.

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

1. A judgment 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 the judgment of conviction or other record relating to 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.

Direct Access means access to a consumer, a consumer's property, or a consumer's personal financial information (checking account information, credit cards, bank statements, etc.).

ICHAT Internet Criminal History Access Tool https://apps.michigan.gov/ is Michigan's on-line criminal history background check.

Michigan Workforce Background Check is pursuant to MCL 400.734b and became effective April 1, 2006. This requires fingerprint background checks for all individuals seeking employment with an adult foster care facility. The intent of the law is to protect the vulnerable adult population residing in these facility types.

Personnel for purposes of this policy, "personnel" means, employees, contractors, volunteers, interns, and any other staff.

STANDARDS

BMHA and contracted service providers shall not employ, contract with, authorize services for, reimburse services for, or seek reimbursement for services delivered, prescribed, or ordered by any individual if:

1. The individual has received a criminal history screening indicating a mandatory disqualifying conviction listed in Subdivision (1) in the table below (42 USC 1320a-7(a).
2. The individual has been the subject of a substantiated finding or an order or disposition as described in Subdivision (8) in the table below.
3. The individual has direct access, or provides services, to program consumers in a prescribed setting (inpatient psychiatric, specialized residential, direct care workers and behavior technicians) OR the individual is acting as a behavior technician, and the individual has received a criminal history screening 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 400.734b, MCL 333.18263);

PROCEDURE

A. Background Checks
    1. **Specialized Residential and Psychiatric Inpatient settings:** Inpatient psychiatric facilities and licensed adult foster care homes shall follow 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 bi-annual re-checks of criminal history status are not necessary.
    2. **BMHA 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.

i. 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.
ii. 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 consumers):
    1. OIG exclusion verifications to ensure no mandatory disqualifying convictions from 42 USC 1320a-7(a), or other exclusions (i.e., System for Award Management (SAM)).
    2. Queries for state offenses committed in the state of Michigan.
    3. 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).
    4. A statement signed by the individual that indicates the following:

        That he or she has not been the subject of a substantiated finding or an order or disposition as described in Subdivision (8) of the table below.

B. Reporting/Compliance
    1. BMHA will disclose criminal conviction results to SWMBH 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.
    2. 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.

C. Table of Disqualifying Convictions
    1. For purposes of this policy, Subdivisions (1) and (8) apply to all BMHA personnel and contracted service providers.
    2. Subdivisions (2) through (7) apply to personnel working in inpatient psychiatric and specialized residential settings. For purposes of Subdivisions (2) through (7), the time

requirement is from the completion of all terms and conditions of sentencing, parole, and/or probation for the conviction to the date of application for employment or clinical privileges.

3. Subdivision (9) applies only to individuals being considered for or employed as Behavior Technicians delivering applied behavior analysis services.
4. Mandatory and Time-limited disqualifications are described in part in the table below. BMHA and its contracted service providers remain responsible for complying with all applicable Federal and State of Michigan laws, rules, and regulations as it pertains to criminal background screenings and disqualifications.

Subdivision 1 - Mandatory Disqualifications Persons with the following convictions are <u>Excluded</u> 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.
Subdivisions 2 – 8: Disqualifications related to MCL 333.20173a, MCL 330.1134a and MCL 400.734b
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, 1931 PA 328, MCL 750.145m 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

1. Other felony or attempt or conspiracy to commit felony, other than those described under Subdivision 1 and Subdivision 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.
6. A misdemeanor of retail fraud in the second degree 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 – offenses 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 – offenses 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 <u>Excluded</u> 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). 2. Is the subject of an order or disposition under section 16b of chapter IX of the code of criminal procedure (Not Guilty by Reason of Insanity (NGRI)).
Subdivision 9 – These individuals are <u>Excluded</u> from working as a Behavior Technician providing applied behavior analysis services
Refer to MCL 333.18263 for exclusions.

Reviewer: Director of Provider Network, Director of Regulatory Compliance and Director of Human Resources

Reviewed: 2/17, 3/18, 6/19, 2/2020, 5/2021, 3/2022, 6/2023, 5/2024, 6/2025, 7/2026