

POLICIES AND PROCEDURE MANUAL

Chapter:	Compliance		
Title:	Disqualified Providers		
Policy: <input checked="" type="checkbox"/>	Review Cycle: Annually	Adopted Date: 07.09.2019	Related Policies: Provider Network Management Disclosure of Ownership, Control, and Criminal Convictions; Credentialing: Background Checks and Primary Source Verification
Procedure: <input type="checkbox"/>	Author: Director of Customer Service, Compliance and Quality	Review Date: 07.07.2020	
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Purpose

To ensure individual providers are eligible to participate in federal and state health care programs (e.g.: Medicaid and Medicare) and are not excluded from participation based on federal and state regulations.

Policy

MSHN and its provider network 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 identified in 42 USC 1320a-7(a);
2. The individual has been the subject of a substantiated finding; or
3. The individual has direct access, or provides direct services, to program participants in a prescribed setting (inpatient hospital and specialized residential) 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 (MCL 20173a, MCL 330.1134a, MCL 400.734b).

Reporting:

1. All employees, directors, managers, and individuals with any other type of employment or consulting arrangement with MSHN are required to report the following to Human Resources within five (5) days of conviction or assessment imposition:
 - a. Any criminal conviction, felony or misdemeanor; and/or
 - b. The imposition of civil money penalties or assessments imposed under Subsection 1128A of the Social Security Act (**Exclusion Regulations https://www.ssa.gov/OP_Home/ssact/title11/1128A.htm**).
2. Criminal conviction resulting in disqualifications are to be disclosed to MSHN by the CMHSP participants and MSHN direct contracted entities with regard to those offenses as detailed in Subsections 1128(a) and 1128(b)(1), (2), of (3) of the Social Security Act, or that have had civil money penalties or assessments imposed under Subsection 1128A of the Act. The report to MSHN will be made within 15 business days of the discovery of the disqualification through electronic submission.
3. MSHN will notify the Michigan Department of Health and Human Services (MDHHS) Behavioral Health and Developmental Disabilities Administration (BHDDA) Division of Program Development, Consultation and Contracts when disclosures are made by providers regarding any offenses detailed in Subsections 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 Subsection 1128A of the Act.

Mandatory and Time-Limited Disqualifications:

The tables below identify disqualifications for participation in a provider capacity in Medicare, Medicaid or any other Federal health care programs.

The following table applies to all personnel at MSHN and the Provider Network.

Disqualifications related to the Social Security Act, subsections 1128(a), 1128(b)(1), (2), and (3); 1128A; Title V, XX, XXI, XVII, and XIX; MCL 333.18263; Medicaid Provider Manual (General Information for Providers: Section 6 – Denial of Enrollment, Termination and Suspension)
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.
5. An individual shall not act as a behavior technician in this state unless he or she has had a criminal history check conducted and the criminal history check does not contain any criminal history record information for that individual.
Disqualifications related to the Medicaid Provider Manual (General Information for Providers: Section 6 – Denial of Enrollment, Termination and Suspension)
Time-Limited Disqualifications Time Requirement*: 10 Years
The provider has a federal or state felony conviction within the preceding 10 years of their provider enrollment application, including but not limited to, any criminal offense related to:
1. Murder, rape, abuse or neglect, assault, or other similar crimes against persons
2. Extortion, embezzlement, income tax evasion, insurance fraud, and other similar financial crimes
3. The use of firearms or dangerous weapons
4. Any felony that placed the Medicaid program or its beneficiaries at immediate risk, such as a malpractice suit that results in a conviction of criminal neglect or misconduct.
Disqualifications related to the Medicaid Provider Manual (General Information for Providers: Section 6 – Denial of Enrollment, Termination and Suspension)
Time-Limited Disqualifications Time Requirement*: 5 Years
The provider has a federal or state misdemeanor conviction within the preceding five years of their provider enrollment application, including but not limited to, any criminal offense related to:
1. Any misdemeanor crime listed as a permissive exclusion in 42 USC 1320a-7(b);
2. Rape, abuse or neglect, assault, or other similar crimes against persons;
3. Extortion, embezzlement, income tax evasion, insurance fraud, or other similar financial crimes;
4. Any misdemeanor that placed the Medicaid program or its beneficiaries at immediate risk, such as a malpractice suit that results in a conviction of criminal neglect or misconduct.

The following tables apply to staff working in a Specialized Residential Setting (adult foster care homes). That includes an individual that has direct access, or provides direct services, to program participants in a prescribed setting 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.

Disqualifications related to MCL 333.20173a, MCL 330.1134a and MCL 400.734b
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). https://www.legislature.mi.gov/(S(sigap145p0xoam2bb0t0kxrp))/documents/mcl/pdf/mcl-328-1931-XXA.pdf
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.
Time-Limited Disqualifications Time Requirement*: 10 years
1. Other felony or attempt or conspiracy to commit felony, other than those described under the mandatory and .the 15 year time limited disqualifications sections.
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 the 5-year time limited disqualification section
5. A misdemeanor involving abuse or neglect.
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 violations of section 601d (10 of the Michigan vehicle code, 1949 PA 300, MCL 257.601d.
5. A misdemeanor involving larceny unless otherwise provided under the 1-year time limited disqualification section.

6. A misdemeanor of retail fraud in the second degree unless otherwise provided in the 1-year time limited disqualification section.
7. Any other misdemeanor involving assault, fraud, theft, or the possession or delivery of a controlled substance unless otherwise provided in the 1, 3, and 10-year time limited disqualifications sections.
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 harm.
2. A misdemeanor of retail fraud in the third degree unless otherwise provided under the 1-year time limited disqualification section.
3. A misdemeanor under part 74 (MCL 333.74- offenses related to controlled substances) unless otherwise provided under the <u>1</u> -year time limited disqualification section.
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 of retail fraud in the second or third degree if the individual, at the time of the conviction, is under the age of 16.

*** 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.**

Applies to

- All Mid-State Health Network
- Staff Selected MSHN Staff, as follows:
- MSHN’s Affiliates: Policy Only Policy and Procedure Other: Sub-contract Providers

Definitions

- A. **Behavioral Health**: refers to individuals with a Mental Health, Intellectual Developmental Disability and/or Substance Use Disorder or children with Serious Emotional Disturbances
- B. **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.
- C. **Direct Access**: Means access to a Customer, a Customer’s property, or a Customer’s personal financial information (checking account information, credit cards, bank statements, etc.).
- D. **Personnel**: For purposes of this policy, “personnel” means, employees, contractors, volunteers, interns, and any other staff.
- E. **Provider Network**: Refers to a CMHSP Participant and all Behavioral Health Providers that are directly under contract with the MSHN PIHP to provide services and/or supports through direct operations or through CMHSP subcontractors.
- F. **Subcontractors**: refers to an individual or organization that is directly under contract with a CMHSP to provide services and/or supports.

Other Related Materials

Medicaid Service Administration (MSA) Policy Bulletin 18-09: Home Help Agency Provider Standards

References/Legal Authority

42 U.S.C 1320a-7

Mental Health Code - MCL

330.1134a Public Health Code -

MCL 400.734b Public Health Code

- MCL 333.20173a Public Health

Code -MCL 333.18263 42 CFR

441.570

1128 A of the Social Security

Act 1128 B of the Social

Security Act

Medicaid Provider Manual: General Information for Providers: Section 6 – Denial of Enrollment,
Termination and Suspension

Attachment A: Excluded Convictions Worksheet

Change Log:

Date of Change	Description of Change	Responsible Party
04.25.2019	New Policy	Director of Compliance, Customer Service & Quality
09.2019	Updates based on Medicaid Provider Manual Revisions	Director of Compliance, Customer Service & Quality
10.2019	Added clarification for substantiated recipient rights complaints	Director of Compliance, Customer Service & Quality
12.2019	Added clarification for reporting disqualifications to MSHN and for substantiated recipient rights complaints	Director of Compliance, Customer Service & Quality

Attachment A

Lookback Periods:

- Reference the date of conviction in relation to the date of application or enrollment (i.e., within X years preceding the date of application/enrollment)
- An exception is felonies for ABA Techs, which are in reference to the date of completion of “all of the terms and conditions of his or her sentencing, parole, and probation for that conviction”

An individual or entity is considered to have been convicted of a criminal offense when:

- a judgment of conviction has been entered against the individual or entity by a federal, state, tribal or local court regardless of whether there is an appeal pending;
- there has been a finding of guilt against the individual or entity by a federal, state, tribal or local court; or
- a plea of guilty or nolo contendere by the individual or entity has been accepted by a federal, state, tribal, or local court.
- (for behavioral technicians) a final conviction, the payment of a fine, a plea of guilty or nolo contendere if accepted by the court, or a finding of guilt for a criminal law violation or a juvenile adjudication or disposition by the juvenile division of probate court or family division of circuit court for a violation that if committed by an adult would be a crime.

Enrolled Medicaid Prov.			Additional Req's for ABA Techs		Law or Rule Reference	
Conviction/ Offense	Felony	Misdemeanor	Felony	Misdemeanor		
<input type="checkbox"/>					Termination on or after Jan 1, 2011 under Medicare, Medicaid or Children's Health Insurance Program (CHIP) <u>of any other state</u>	A
<input type="checkbox"/>					Exclusion from participation in a provider capacity in Medicare, Medicaid or any other Federal health care programs	A
<input type="checkbox"/>	X				Related to the delivery of an item/service under Medicare or Medicaid	A, C
<input type="checkbox"/>	X				Violation of the Medicaid False Claims Act, the Health Care False Claims Act, a substantially similar statute, or a similar statute by another state or the federal gov't	A
<input type="checkbox"/>	w/in 10 yrs	w/in 5 yrs	w/in 10 yrs after completion of parole/ probation		That placed the Medicaid program or its beneficiaries at immediate risk, such as a malpractice suit that results in a conviction of criminal neglect or misconduct.	A, D

Enrolled Medicaid Prov.			Additional Req'ts for ABA Techs			Law or Rule Reference	
☐ Check	Conviction/ Offense	Felony	Misdemeanor	Felony	Misdemeanor		
	☐		After Aug. 21, 1996	After Aug. 21, 1996			Related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct [related to government programs]: • in connection with the delivery of a health care item or service; OR
☐		After Aug. 21, 1996	After Aug. 21, 1996			• with respect to any act or omission in a health care program (<u>other than Medicaid & Medicare</u>) operated by or financed in whole or in part by any Federal, State, or local government agency; OR	A, C
☐			After Aug. 21, 1996			• with respect to any act or omission in a program (<u>other than a health care program</u>) operated by or financed in whole or in part by any Federal, State, or local government agency	A, C
☐		w/in 10 yrs	w/in 5 yrs	w/in 15 yrs after completion of parole/ probation		Extortion, income tax evasion, insurance fraud, and other similar financial crimes	A, D
☐		w/in 10 yrs	w/in 5 yrs	w/in 15 yrs after completion of parole/ probation	w/in 5 yrs	Embezzlement	A, D
☐					w/in 5 yrs	Larceny	D
☐					w/in 5 yrs if committed when <16 yrs, then w/in 1 yr	Retail Fraud in the 2 nd Degree	D
☐					w/in 3 yrs if committed when <16 yrs old, then w/in 1 yr	Retail Fraud in the 3 rd Degree	D
☐					w/in 5 yrs	Fraud or theft not otherwise addressed in this list	D
☐					w/in 5 yrs	Home invasion	D
☐						Subject to an order or disposition of not guilty by reason of insanity	D, H
☐		w/in 10 yrs		w/in 15 yrs after completion of parole/ probation		Murder	A, D
☐					w/in 5 yrs	Negligent homicide or a moving violation that is proximate cause of death of another person or serious impairment of body function	D, G

Enrolled Medicaid Prov.			Additional Req'ts for ABA Techs			Law or Rule Reference	
<input type="checkbox"/> Check	Conviction/ Offense	Felony	Misdemeanor	Felony	Misdemeanor		
<input type="checkbox"/>		w/in 10 yrs		Includes attempts/ conspiracy to commit; w/in 15 yrs after parole/ probation	w/in 10 yrs*	Use of firearms or dangerous weapons *Additional info for misdemeanors for ABA Techs: ...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	A, D
<input type="checkbox"/>				Includes attempts/ conspiracy to commit; w/in 15 yrs after completion of parole/ probation		Involving 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.	D
<input type="checkbox"/>				Includes attempts/ conspiracy to commit; w/in 15 yrs after completion of parole/ probation	w/in 10 yrs, if committed when <16 yrs old, then w/in 5 yrs	A felony involving cruelty or torture	D
<input type="checkbox"/>		w/in 10 yrs	w/in 5 yrs	w/in 15 yrs after completion of parole/ probation	w/in 5 yrs if no weapon and no intent to murder/ inflict great bodily injury, w/in 3 yrs	Assault or other similar crimes against persons	A, D
<input type="checkbox"/>		w/in 10 yrs	w/in 5 yrs	w/in 15 yrs after completion of parole/ probation		Rape or other similar crimes against persons	A, D
<input type="checkbox"/>				Includes attempts/ conspiracy to commit; w/in 15 yrs after completion of parole/ probation	w/in 10 yrs	Involving criminal sexual conduct	D
<input type="checkbox"/>	X					Related to neglect or abuse of patients in connection with the delivery of a health care item or service.	A, C

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	w/in 10 yrs	w/in 5 yrs	Includes attempts/ conspiracy to commit; w/in 15 yrs after completion of parole/ probation	w/in 10 yrs	Abuse or neglect	A, D
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Enrolled Medicaid Prov.			Additional Req'ts for ABA Techs			Law or Rule Reference	
<input type="checkbox"/> Check	Conviction/ Offense	Felony	Misdemeanor	Felony	Misdemeanor		
<input type="checkbox"/>						Substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency (regarding long term care facilities)	D, I
<input type="checkbox"/>				Includes attempts/ conspiracy to commit; w/in 15 yrs after completion of parole/ probation	w/in 10 yrs	Related to chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r: <ul style="list-style-type: none"> Caregiver who intentionally causes serious physical harm or serious mental harm to a vulnerable adult Reckless act or reckless failure to act of the caregiver or other person with authority over the vulnerable adult causes serious physical harm or serious mental harm An operator/employee/individual acting on behalf of an unlicensed facility that is subject to licensure, who violates the adult foster care facility licensing act or public health code or rules and whose violation is a proximate cause of the death of a vulnerable adult Caregiver/person with authority over vulnerable adult or licensee convicted of felony due to repeated misdemeanor violations of the adult foster care licensing act regarding funds, retaliation against staff/ residents, obstruction, falsifying info, etc. 	D, E
<input type="checkbox"/>	After Aug. 21, 1996	w/in 5 yrs				Relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance (Per MSA provider enrollment on 02/14/20 excludes possession)	A, C
<input type="checkbox"/>					w/in 3 yrs if committed when <18 yrs old, then w/in 1 yr	<ul style="list-style-type: none"> Manufacturing, creating, delivering, or possessing with intent to manufacture, create, or deliver a controlled substance, prescription form, or counterfeit prescription form Dispensing, prescribing, or administering controlled substance outside the scope of practice of a practitioner, licensee, or applicant 	D, F
<input type="checkbox"/>				Includes attempts/ conspiracy to commit; w/in 15 yrs after parole/ probation		A felony involving the diversion or adulteration of a prescription drug or other medications	D
<input type="checkbox"/>					w/in 5 yrs	Possession or delivery of a controlled substance	D
<input type="checkbox"/>						<u>Failure to Comply w Enrollment & Screening Requirements:</u> Failure to submit timely and accurate information; cooperate with MDHHS screening methods; submit sets of fingerprints as required within 30 days of a CMS or MDHHS request; permit access to provider locations for site visits; and/or comply with Medicaid policies regarding submission of claims and billing Medicaid beneficiaries. Falsification of information provided on the enrollment application or subsequent information requests. Inability to verify their identity	A, B

A = Michigan Medicaid Manual; General Information for All Providers; Section 6 – Denial of Enrollment, Termination and Suspension; 6.1 Termination or Denial of Enrollment

B = Social Welfare Act, Public Act 280 of 1939 (MCL 400.111b -111e) and 42 CFR 455.416

C = 42 USC 1320a-7 Exclusion of certain individuals and entities from participation in Medicare and state health care programs

D = Public Act 19 of 2020 (Public Health Code revision) Section 18263 regarding behavioral technicians

E = Chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r regarding vulnerable adults

F = Public Health Code 333.7401 “Part 74” regarding controlled substances

G = Michigan vehicle code, 1949 PA 300, MCL 257.601d

H = Code of Criminal Procedure MCL 769.16b regarding not guilty by reason of insanity

I = 42 USC 1395i-3a: Protecting residents of long-term care facilities

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