



HURON BEHAVIORAL HEALTH OPERATIONAL POLICY

Policy #: **HR.1.06**
Issue Date: 07/14/11
Rev. Date: 04/20/18
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Title: **Good Moral Character and Criminal Histories Policy**

Prepared By: **Executive Director**

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Purpose:

To define the organization's policy on good moral character and criminal histories as it relates to employment of staff.

Scope:

This procedure applies to all employees (including full-time employees, part-time employees, contractual providers, volunteers, students, and/or interns) of Huron Behavioral Health (HBH).

Information:

- Huron Behavioral Health makes a good faith effort to comply with Public Act 27, 28, and 29 of 2006. In brief summary, this Michigan statute mandates the obtainment of extensive criminal history background information, including FBI fingerprinting, of all individuals who seek employment, independent contractors, or clinical privileges in positions that provide "direct access" to the consumers served by HBH. "Direct Access" is defined by Public Act (PA) 27, 28, and 29 of 2006 as access to a consumer, or to a consumer's property, financial information, medical records, treatment information, or any other identifying information. This law supplements and reinforces HBH's long-standing policies relating to requisite good moral character and suitability to work with vulnerable individuals.
- HBH shall not employ nor contract for services or goods with any individuals or entities that do not meet the federal and state requirements as defined below.
- PA 27, 28, and 29 of 2006 prohibits individuals with certain criminal conviction histories from regularly providing direct services to consumers. A complete list appears below.
- PA 27, 28, and 29 of 2006 also prohibits the employment, independent contract, or clinical privileging to individuals who have been the subject of a finding of not guilty by reason of insanity and findings of neglect, abuse, or misappropriation of property by a state or federal agency pursuant to an investigation conducted in a psychiatric facility or intermediate care facility.

Policy:

1. The criminal history background information defined in this policy will be obtained by HBH only after a written good faith offer of employment or contract has been extended. All workers covered under this law must, as a condition of employment, execute any and all consent forms, acknowledgements, and releases arising from compliance with PA 27, 28, and 29 of 2006. The Human Resource (HR) Manager will conduct various exclusions/debarments and criminal background checks, which may include, but is not necessarily limited to:
 - Office of the Inspector General (OIG)
 - Michigan Public Sex Offender Registry (MIPSOR)
 - Nurses Aid Registry (NAR) (if applicable)
 - Michigan Department of Corrections (MDOC)
 - Offender Tracking Information System (OTIS)
 - Michigan State Police - Internet Criminal History Access Tool (MSP - ICHAT)
 - Verify/Comply (Medicaid/Medicare and other Exclusion lists)

These checks will be completed prior to any consumer contact. Upon completion of the checks, the HR Manager records the findings on the "Criminal History Check Form" (90-562).

2. As a condition of continued employment, the HR Manager conducts on-going annual background checks on non-clinical direct access workers. All direct access workers must immediately report to HBH any arraignment

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or conviction of one or more of the following offenses that make them ineligible to work for this agency under PA 27, 28, and 29 of 2006. As an additional condition of employment, all direct access workers must report to HBH if they have become the subject of an order or disposition finding of not guilty by reason of insanity. Additionally, workers are to report if they are the subject of a substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency pursuant to an investigation.

3. The provision of false, incomplete, or misleading information during the application and hiring process or after hire will result in refusal of employment and/or immediate termination. Under Michigan law (the Michigan Mental Health Code 330.1134a, an individual who knowingly provides false information regarding his or her identity, criminal convictions, or substantiated findings is guilty of a misdemeanor punishable by imprisonment for not more than ninety-three (93) days or a fine of not more than \$500.00, or both.
4. An individual is prohibited from working in a direct consumer-care setting if the individual satisfies one or more of the following excerpts from Michigan PA 27, 28, and 29 of 2006:
 - a. The individual has been convicted of a relevant crime described under 42 USC 1320a-7. This federal statute provides a mandatory exclusion for individuals who have been convicted of the following crimes:
 - Conviction related to patient abuse
 - Felony conviction related to health care fraud
 - Felony conviction related to controlled substance
 - Conviction of a crime related to the delivery of an item or service

This federal statute also provides a permissive exclusion from participation in any federal healthcare program for individuals who have been convicted of the following crimes:

- Criminal offense consisting of fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct;
 - Conviction related to obstruction of an investigation or audit;
 - Misdemeanor conviction related to controlled substance
 - License revocation or suspension
 - Exclusion or suspension under Federal or State healthcare program
 - Fraud, kickbacks, and other prohibited activities (as defined in 1320a-7a, 7b, and 8)
 - Entities controlled by an individual who has been sanctioned from participation in Federal or State healthcare programs
 - Individuals controlling an entity that has been sanctioned from Federal and State healthcare programs
- b. The individual has been convicted of:
 - Any of the felonies listed below;
 - An attempt or conspiracy to commit a felony listed below; or
 - A state or federal crime that is "similar" to the listed felonies (other than a felony for a relevant crime described under 42 USC 1320a-7).

If fifteen (15) years have elapsed since the individual completed all the terms and condition of his or her sentencing, parole, and probation for that conviction prior to the date of application for employment or clinical privileges or the date of the execution of the independent contract, the individual is not prohibited from working in a covered long term setting. Felonies requiring a fifteen (15) year lapse:

- 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 involves the threat of the use of force or violence
- A felony involving cruelty or torture
- A felony involving criminal sexual conduct
- A felony involving abuse or neglect

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- A felony involving the use of a firearm or dangerous weapon
 - A felony involving the diversion or adulteration of a prescription drug or other medication
 - A felony involving a vulnerable adult under Chapter XXA of the Michigan Penal Code, PA 328 of 1931, MCL 750.145m to 750.145r
- c. The individual has been convicted of a felony or an attempt or conspiracy to commit a felony, other than a felony for a relevant crime described under 42 USC 1320a-7 or a felony described under subdivision (b), unless ten (10) years have lapsed since the individual completed all of the terms and conditions of his or her sentencing, parole, and probation for that conviction prior to the date of application for employment or clinical privileges or the date of the execution of the independent contract.
- d. The individual has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the ten (10) years immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract:

Misdemeanors or Convictions requiring a ten (10) year lapse:

- A misdemeanor involving abuse or neglect
 - A misdemeanor involving cruelty or torture unless otherwise provided under subdivision (e).
 - A misdemeanor involving criminal sexual conduct
 - A misdemeanor that involves vulnerable adult abuse under Chapter XXA of the Michigan Penal Code, 1931 PA 328, MCL 750.145m to 750.145r
 - 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
- e. The individual has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the five (5) years immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract:

Misdemeanor convictions requiring a five (5) year lapse:

- A misdemeanor involving cruelty if committed by an individual who is less than 16 years of age
 - A misdemeanor involving home invasion
 - A misdemeanor involving embezzlement
 - A misdemeanor involving negligent homicide
 - A misdemeanor involving larceny unless otherwise provided under subdivision (g)
 - A misdemeanor of retail fraud in the second degree unless otherwise provided under subdivision (g)
 - Any other misdemeanor involving assault, fraud, theft, or the possession or delivery of a controlled substance unless otherwise provided under subdivision (d), (f), or (g)
- f. The individual has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the three (3) years immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract:

Misdemeanor convictions requiring a three (3) year lapse:

- 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.
- A misdemeanor of retail fraud in the third degree unless otherwise provided under subdivision (g)
- A misdemeanor under part 74 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461 relating to controlled substances, unless otherwise provided under subdivision (g).

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- g. The individual has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the year immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract:

Misdemeanor convictions requiring a 1-year lapse:

- A misdemeanor under part 74 of the Public Health Code, 1978 PA 368, MCL 333.7401 to 333.7461 relating to controlled substances, if the individual, at the time of conviction is under the age of 18.
 - 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 sixteen (16).
- h. The individual is the subject of an order or disposition under section 16b of Chapter IX of the Code of Criminal Procedure, 1927 PA 175, MCL 769.16b. This statutory provision pertains to a finding of not guilty by reason of insanity.
- i. The individual has been 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 skilled nursing facilities in accordance with 42 USC 1395i-3 or 1396r.

Definitions/Acronyms:

FBI – Federal Bureau of Investigation
HBH – Huron Behavioral Health
MCL - Michigan Code of Law
PA – Public Act
USC – United States Code

Forms:[90-562 Personnel Criminal History Check Form](#)**Records:**Employee records are retained by the Human Resources (HR) Manager in accordance with [“HR Record Retention Policy” \(HR.1.03\)](#).**Reference(s) and/or Legal Authority**[HR.1.03 HR Record Retention Policy](#)**Change History:**

Change Letter	Date of Change(s)	Changes
None		New policy – this organizational policy was converted from Personnel Policy PPM.3.15 with same title to more appropriately reflect placement in the agency's Controlled Documentation system. Very minor grammatical and formatting changes were made – no content changes were made at this time.
A	04/30/14	Reviewed - no content changes made
B	07/06/16	Reviewed by HR Manager – no content changes made.
C	04/20/18	In “Information” section added 2 nd bullet, in last bullet changed “in a skilled nursing facility” to “in a psychiatric facility or intermediate care facility”, In “Policy” section added last sentence in #1 and added bullets, in #2 1 st sentence added “the HR Manager conducts on-going...”, in #3 added “or after hire”, in 4.a added “from participation in any federal healthcare program” and added bullets 4 th – 8 th , made several additional minor wording/grammatical changes/corrections throughout document without changing sentence content.