

Background Checks

Department of Human Services

Background Check

Licensee Training

Speaker

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Division of Adult Foster Care and
Home for the Aged Licensing

Legal Reference

Homes
for the Aged

Public Act 368

MCL 333.20173a

Adult Foster
Care

Public Act 218

MCL 400.734b

Employees required to have full background checks completed

- Employees, and contractors (or granted clinical privileges for HFA only)
- hired after 4/1/06,
- who have regular, direct access
- to residents, or their personal, financial or medical information,
- must have a full background check completed.

A background check is not required for:

- an individual who independently contracts with an adult foster care or home for the aged for work not directly related to the clinical, health care, or personal services delivered by the facility,
- or the individual's duties are not performed on an regular basis with direct access to residents.

Website Requirements

All background checks must be completed on the miltcpartnership.org website.

Definitions

- **Exclusionary** = Disqualifying = not employable
- **Non-exclusionary** = no exclusionary findings = employable
- **Exempt** = Grandfathered = employed before 4/1/06
- **MCL** = Michigan Compiled Laws

Life Time Exclusions

MCL 400.734b(1)a - MCL 333.20173a(1)a
and

MCL 400.734b(1)(h) - MCL 333.20173a(1)(h)

❖ 42 USC 1320a-7 mandates employment exclusion from AFC and HFA facilities if convicted after 08/21/1996 of the following felonies:

1. Health Care fraud by a professional
2. Patient abuse in a Medicare/Medicaid certified facility
3. Unlawful manufacture, distribution, prescription or dispensing of a controlled substance

Or

- Been Found "Not Guilty by Reason of insanity"

Felony Exclusionary Time Frames

All felony exclusionary periods are determined beginning with the date the individual completes the terms of sentencing. (i.e. parole, probation)

Felony convictions can result in 15 or 10-year exclusionary periods.

15-Year Felony Exclusions:

MCL 400.734b(1)b and MCL 333.20173a(1)b

1. Felony with intent to cause death or serious impairment of a body function
2. Felony that results in death or serious impairment of a body function
3. Felony that involves the use of force or violence
4. Felony that involves the threat of force or violence

15-Year Felony Exclusions: (cont.)

5. A felony involving cruelty or torture
6. A felony involving a vulnerable adult per MCL 400.734b(1)1(b)iii and MCL 333.20173a(1)b(iii)
7. A felony involving criminal sexual conduct
8. A felony involving abuse and neglect
9. A felony involving the use of a firearm or dangerous weapon
10. A felony involving the diversion or adulteration of a prescription drug or other medication

10-Year Felony Exclusions: MCL 400.734b(1)c and MCL 333.20173a(1)c

All other felonies

Misdemeanor Exclusionary Time Frames

- All misdemeanor exclusionary periods are determined beginning with the date of conviction.
- Misdemeanor convictions can result in 10-year, 5-year, 3-year or 1-year exclusionary periods.

10-Year Misdemeanor Exclusions:

MCL 400.734b(1)d and MCL 33.20173a(1)d

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
2. A misdemeanor involving the use of force or violence or the threat of the use of force or violence
3. A misdemeanor involving a vulnerable adult
MCL 400.734b(1)(b)(iii) and MCL333.20173a(1)b(iii)
4. A misdemeanor involving criminal sexual conduct

10-year Misdemeanor Exclusions: cont.

5. A misdemeanor involving cruelty or torture
6. A misdemeanor involving abuse or neglect

5-year Misdemeanor Exclusions: MCL 400.734b(1)e and MCL 333.20173a(1)e

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

5-year Misdemeanor Exclusions: cont.

5. A misdemeanor involving larceny
6. A misdemeanor of retail fraud in the second degree (**shoplifting is retail fraud**)
7. Any misdemeanor involving assault, fraud, theft, or the possession or delivery of a controlled substance (**a non-sufficient funds check is fraud**)

3-Year Misdemeanor Exclusions:

MCL 400.734b(1)f and MCL 333.20173a(1)f

1. A misdemeanor for assault
2. A misdemeanor of retail fraud in the third degree
3. A misdemeanor involving use of a controlled substance (non-narcotic)

1-Year Misdemeanor Exclusions:

MCL 400.734b(1)g and MCL 333.20173a(1)g

1. Any misdemeanor involving use of a controlled substance if the person is convicted before 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**

Misdemeanor Assault Categories

- 10-year exclusion-Misdemeanor convictions for aggravated assault, aggravated domestic violence, or felony assault reduced to a misdemeanor
- 5-year exclusion-Misdemeanor assault and/or assault and battery, including domestic violence
- 3-year exclusion-Misdemeanor simple assault or assault (without battery)

Misdemeanor Controlled Substance Categories

- 5-year exclusion-delivery of a controlled substance (all types)-Possession and use of Controlled substance (narcotics)
- 3-year exclusion-Possession or use of a controlled substance (non-narcotic)
- 1-year exclusion-Use of a controlled substance if the individual was under the age of 18 at the time of conviction

EXEMPTED EMPLOYEES

MCL 400.734b(2) and MCL 333.20173a(2)

Individuals are classified as

exempt/grandfathered

if they were employed in an
AFC or HFA facility before

April 1, 2006

Exempt Employee cont.

Exempt employees convicted of a disqualifying crime after 4/1/2006,

- are no longer exempt and
- shall be terminated or denied employment.

MCL 400.734b(2) and MCL 300.20731a(2)(a)

Exempt Employee cont.

- The fingerprinting of AFC exempt employees (employees hired before April 1, 2006) must begin April 1, 2009.
- HFA deadline for exempt employee fingerprinting has been extended until April 1, 2011. **However, they may begin now.**
- Adult Foster Care and Home for the Aged facilities will not be charged for fingerprinting services.

Employment Clarifications

- If a facility hires a previously exempted employee, a full background check must be completed by the new employer.
- If a full background check is completed on a previously exempted employee, this law does not require disqualification from employment for convictions prior to 4/1/06.
- Employment experience in a licensed facility prior to 4/1/06 is transferable only to the same licensed type of facility for grandfathering purposes. i.e. AFC employment prior to 4/1/06 will grandfather an individual into an AFC after 4/1/06 but not into a HFA. The same applies to HFA.
- If a facility has a change in licensee, new background checks are not required on employees who continue employment at that facility. Contact analyst to transfer employee information on the website to the new owner.

Document Compliance Requirements

Needed Items in Employment Files

Exempt Employee hired before 04/01/2006

1. MDHS-Exempt Employee Information and Agreement form (or its equivalent)
2. Fingerprint Receipt
3. Exempt Employee Fingerprint Confirmation notice

Note: HFA deadline for exempt employee fingerprinting has been extended until April 1, 2011.

Employment Applicants conditionally hired after 04/01/2006

1. MDHS-Employment Applicant Consent and Disclosure form (or its equivalent)
2. Fingerprint Receipt
3. Employability Notice

Criminal Penalties for Misuse of Information:

MCL 400.734 (10) and MCL 333.20173a(9)

- Provides punishment for misuse of information—Must keep information confidential—use only to make hiring decision.
- Guilty of misdemeanor punishable by 93 days or a fine of \$1000 or both (i.e., criminal penalty)

Employees Must Self Report to Licensee:

MCL 400.734b(11)a and MCL 333.20173a(10)a

- Arraignments
- Convictions
- Findings of abuse/neglect
- Not guilty by reason of insanity
- ❖ Reporting of an arraignment is not cause for termination or denial of employment

Rap-Back System:

If an employee or contractor or individual granted clinical privileges (HFA only) is arrested, arraigned or convicted of a crime,

And, their fingerprints match prints on file with the State Police, the State Police will inform the Department.

The Department, will inform the employer of any disqualifying convictions and felony arrests.

If the employee is convicted of a disqualifying crime, they must be terminated from employment in order for the licensee to remain in compliance.

Penalties for licensee not complying with background check requirements:

MCL400.734b(10) and MCL 333.10173a(9)

- Guilty of misdemeanor
- Imprisonment for 1 year/Fine of not more than \$5,000 or both. (Gross Neglect or Intentional Misconduct, Or Willfully not conducting the checks)

Questions?

DHS: ocalcheck@michigan.gov

(877) 718-5542

Or

WWW.MILTCPARTNERSHIP.ORG