

## Information in State statutes and regulations relevant to the National Background Check Program: Michigan

This document describes what was included as of January 2011 in Michigan statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. Michigan has seven relevant statutes and regulations, all of which were used in gathering information for this document, and which are listed below in the State Statutes and Regulations section.

<b>Key Feature</b>	<b>Description</b>
Specific facility and provider types	The State covers six of the long term care (LTC) facility and provider types named in the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act), namely: skilled nursing facilities, nursing facilities, home health agencies, hospice care providers, adult day care providers, and intermediate care facilities for the mentally retarded (ICF-MR).
Registry checks	Not addressed.
Fingerprinting	All applicants for employment with one of the six listed facility or provider types are fingerprinted.
Rap back	The State has a rap back process in place.
Provisional employment	Statutes and regulations indicate that the State allows for provisional employment, but do not clarify the provisional employment period.
Definition of direct patient access employee	In Michigan, the term direct patient access employee only covers personnel with regular (scheduled) access to residents or their property, financial information, or medical information. The definition includes independent contractors but does not include volunteers (except hospice volunteers).
Provision of criminal background check results to employee	Not addressed.
Expiration of criminal history background check results	Not addressed.

Key Feature	Description
<p>Inclusion of disqualifying crimes specified in section 6201 of the Affordable Care Act:</p> <ol style="list-style-type: none"> <li>1. Medicare/Medicaid program-related crimes (42 U.S.C § 1320a-7(a)(1))</li> <li>2. Convictions related to patient abuse/neglect (42 U.S.C § 1320a-7(a)(2))</li> <li>3. Felony convictions related to health care fraud (42 U.S.C § 1320a-7(a)(3))</li> <li>4. Certain felony convictions related to controlled substances (42 U.S.C § 1320a-7(a)(4))</li> </ol>	<ol style="list-style-type: none"> <li>1. State statutes and regulations bar LTC employment for convictions of these federally mandated disqualifying crimes.</li> <li>2. State statutes and regulations bar LTC employment for convictions of these federally mandated disqualifying crimes.</li> <li>3. State statutes and regulations bar LTC employment for convictions of these federally mandated disqualifying crimes.</li> <li>4. State statutes and regulations bar LTC employment for convictions of these federally mandated disqualifying crimes.</li> </ol>
<p>State-identified convictions</p>	<p>See Appendix A – State-identified Disqualifying Convictions. Michigan identifies various disqualifying convictions. More information on the disqualifying convictions can be found in Appendix A.</p>
<p>Opportunity to contest accuracy of background check findings</p>	<p>The State provides a way to contest the accuracy of background check findings.</p>
<p>Ability to remove hiring prohibition based on rehabilitation factors</p>	<p>Not addressed.</p>
<p>Rehabilitation/mitigation process for negative fitness determinations</p>	<p>Not addressed.</p>
<p>Independence of appeal or review process</p>	<p>Not clear.</p>

## State Statutes and Regulations

Citation	Description
Michigan Compiled Laws (MCL) § 333.20173a	This indicates that a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency may not employ, independently contract with, or grant clinical privileges to an individual who would regularly have direct access to or provides direct services to patients or residents in the facility, if the person has been convicted of a relevant crime (relevant crimes are listed).
MCL § 330.1134a	This indicates that an ICF-MR or psychiatric hospital may not employ, independently contract with, or grant clinical privileges to an individual who would regularly have direct access to or provides direct services to patients or residents in the facility, if the person has been convicted of a relevant crime.
MCL § 333.20173b	This is about the appeal process for individuals who are disqualified or denied employment under either of the two statutes above.
MCL § 333.16174(3)	This indicates that fingerprinting and a national criminal record check are required for health-related licensure/certification.
MCL § 400.734b	This indicates that an adult foster care facility may not employ or independently contract with an individual who regularly has direct access to or provides direct services to facility residents, if the individual has been convicted of a relevant crime.
MCL § 28.273	This is about fingerprinting fees and fees for conducting criminal history checks.
Michigan Administrative Code, rule 325.1944(i)	This indicates that homes for the aged must include criminal background check information in their personnel records.

### Key

§ - Section

§§ - Sections

## Appendix A – State-identified Disqualifying Convictions

The State-identified disqualifying convictions include, but are not limited to:  
(These are all subdivisions of Michigan Compiled Laws § 333.20173a.)

### **[Subdivision (a):]**

- A relevant crime described under 42 United States Code 1320a-7(a).

### **[Subdivision (b):]**

- 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,
- a felony involving cruelty or torture,
- a felony under chapter XXA of the Michigan penal code (1931 PA 328), Michigan Compiled Laws 750.145m to 750.145r,
- a felony involving criminal sexual conduct,
- a felony involving abuse or neglect,
- 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, and
- an attempt or conspiracy to commit any of these felonies, or any other State or Federal crime that is similar to them – except where 15 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.

**[Subdivision (c):]**

- A felony or an attempt or conspiracy to commit a felony, other than a National Background Check Program "relevant crime" or a felony described immediately above, unless 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.

**[Subdivision (d):]**

- 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,
- a misdemeanor under chapter XXA of the Michigan penal code (1931 PA 328), Michigan Compiled Laws 750.145m to 750.145r,
- a misdemeanor involving criminal sexual conduct,
- a misdemeanor involving cruelty or torture, unless otherwise provided under Subdivision (e) below,
- a misdemeanor involving abuse or neglect, and
- an attempt or conspiracy to commit any of these misdemeanors, or any other State or Federal crime that is similar to them – except where 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.

**[Subdivision (e):]**

- 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 or a violation of section 601d(1) of the Michigan Vehicle Code (1949 PA 300), Michigan Compiled Laws 257.601d,
- a misdemeanor involving larceny, unless otherwise provided under Subdivision (g) below,
- a misdemeanor of retail fraud in the second degree, unless otherwise provided under Subdivision (g) below, and
- any other misdemeanor involving assault, fraud, theft, or the possession or delivery of a controlled substance, unless otherwise provided under Subdivisions (d), (f), or (g), if the conviction was within the 5 years immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract.

**[Subdivision (f):]**

- 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), and
- a misdemeanor under Michigan Compiled Laws § 333.20174, unless otherwise provided under Subdivision (g), if the conviction was within the 3 years immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract.

**[Subdivision (g):]**

- A misdemeanor under Michigan Compiled Laws § 333.20174, if the individual was under the age of 18 at the time of conviction, or a misdemeanor for larceny or retail fraud in the second or third degree, if the individual was under the age of 16 at the time of conviction, and if the conviction was within the year immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract.