



## MICHIGAN WORKFORCE BACKGROUND CHECK PROGRAM

# LEGAL GUIDE

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*An interpretation of Public Acts 27, 28, and 29 of 2006, as they relate to the types of crimes and their implications to employment suitability in health/adult foster care facilities and agencies*

**Revised May 2007**

## Forward

This legal guide was developed by the Department of Community Health, Office of Legal Affairs, and the Department of Human Services to assist health care/adult foster care providers and agencies in understanding and applying the recent background check laws, Public Acts 27 – 29 of 2006 (MCL 330.1134a, MCL 333.20173a, and MCL 400.734b, respectively), and 42 USC 1320a-7 *as it is incorporated by the state laws*.

### What's New?

The April 2007 legal guide includes MCL citations (with hyperlinks to the Michigan Legislature Website) for the most common disqualifying offenses. Although the list is not exhaustive, it provides a quick reference to how convictions under Public Acts 27 – 29 are categorized by department analysts. Hint: Use Ctrl-F to locate MCL citations quickly.

The distinction between assault/battery convictions under Public Acts 27 - 29 is made by categorizing MCL citations and references to case law supporting the categories are provided in the Table of Cases.

The guide has been reformatted for easier reference to exclusions based on the federal law (42 USC 1320a-7) and the state laws (MCL 330.1134a, MCL 333.20173a, and MCL 400.734b.)

**To download a copy of the legislative authority for the Michigan Workforce Background Check Program, go to [www.legislature.mi.gov](http://www.legislature.mi.gov) or <https://miltcpartnership.org/MainSite/W1.aspx>**

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## Exclusion Authorities

### **Federal Law – [42 USC 1320a-7](#)**

The authority to permanently exclude individuals for relevant convictions under 42 USC 1320a-7 is granted by sections 330.1134a(1)(a), 333.20173a(1)(a), and 400.734b(1)(a) of the Michigan Compiled Laws.

42 USC 1320a-7 (effective August 22, 1996) is a statutory provision within the federal Social Security Act (§§1128 and 1156) which describes a number of crimes, for which a **Federal, State, or local court** “conviction” will exclude an individual from participation in all federal health care programs including Medicare, Medicaid, Tricare, and Veterans programs.

**NOTICE: The definition of a conviction under 42 USC 1320a-7 applies only to that statute. Exclusions under the Michigan statutes are based on a judgment of sentence. Deferred/delayed/suspended sentences are not considered to be convictions under the Michigan law.**

The bases for exclusion under 42 USC 1320a-7 include mandatory exclusions including convictions for program-related fraud and patient abuse, health care fraud and felony controlled substance (relevant crimes). Michigan’s laws prohibit a health/adult foster care facility or agency from employing, contracting with, or granting clinical privileges to an individual who has been convicted of a relevant crime under 42 USC 1320a-7.

If a health care provider arranges or contracts (by employment or otherwise) with an individual or entity who is excluded by the OIG from program participation for the provision of items or services reimbursable under such a Federal program, the provider may be subject to civil monetary penalty (CMP) liability if they render services reimbursed, directly or indirectly, by such a program. CMPs of up to \$10,000 for each item or service furnished by the excluded individual or entity and listed on a claim submitted for Federal program reimbursement, as well as an assessment of up to three times the amount claimed and program exclusion may be imposed. For liability to be imposed, the statute requires that the provider submitting the claims for health care items or services furnished by an excluded individual or entity “knows or should know” that the person was excluded from participation in the Federal health care programs (section 1128A(a)(6) of the Act; 42 CFR 1003.102(a)(2)). Providers and contracting entities have an affirmative duty to check the program exclusion status of individuals and entities prior to entering into employment or contractual relationships, or run the risk of CMP liability if they fail to do so.

<http://oig.hhs.gov/fraud/docs/alertsandbulletins/effectuated.htm>

**Michigan Law – MCL 330.1134a, 333.20173a, and 400.734b**

<b>MENTAL HEALTH CODE (EXCERPT) Act 258 of 1974</b>	<b>PUBLIC HEALTH CODE (EXCERPT) Act 368 of 1978</b>	<b>ADULT FOSTER CARE FACILITY LICENSING ACT (EXCERPT) Act 218 of 1979</b>
<p><b>Public Act 27 Sec. 134a(1)</b> (MCL 330.1134a(1))</p> <p>Except as otherwise provided in subsection (2), a psychiatric facility or intermediate care facility for people with mental retardation shall not employ, independently contract with, or grant clinical privileges to an individual who regularly has direct access to or provides direct services to patients or residents in the psychiatric facility or intermediate care facility for people with mental retardation after the effective date of this section if the individual satisfies 1 or more of the following:</p>	<p><b>Public Act 28 Sec. 20173a(1)</b> (MCL 333.20173a(1))</p> <p>Except as otherwise provided in subsection (2), a health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency shall not employ, independently contract with, or grant clinical privileges to an individual who regularly has direct access to or provides direct services to patients or residents in the health facility or agency after the effective date of this section if the individual satisfies one or more of the following:</p>	<p><b>Public Act 29 Sec. 34b</b> (MCL 400.734b(1))</p> <p>In addition to the restrictions prescribed in sections 13, 22, and 31, and except as otherwise provided in subsection (2), an adult foster care facility shall not employ or independently contract with an individual who regularly has direct access to or provides direct services to residents of the adult foster care facility after the effective date of this section if the individual satisfies 1 or more of the following:</p>

## Section 1: Exclusions under 42 USC 1320a-7

STATUTE	CRIME	MCL	DESCRIPTION
<p><b>330.1134a(1)(a)</b>  <b>333.20173a(1)(a)</b>  <b>400.734b(1)(a)</b></p> <p>NOTE:  1. A conviction under 42 USC 1320a-7 as incorporated in the Michigan statutes results in <u>permanent exclusion</u> from employment in health/adult foster care facilities and agencies.</p> <p><u>2. Under 42 USC 1320a-7</u> an individual or entity is considered to have been “convicted” of a criminal offense—</p> <p>(1) when 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) when there has been a finding of guilt against the individual or entity by a Federal, State, or local court;</p>	<p><b>a relevant crime described under 42 USC 1320a-7</b></p>	<p>Exclusion under 42 USC 1320a-7 can be based on a conviction under Federal, State, or local court law. The MCL codes listed are for Michigan only and do not constitute a comprehensive list.</p> <p><a href="#"><u>750.145m</u></a>  <a href="#"><u>750.145n</u></a>  <a href="#"><u>750.145o</u></a>  <a href="#"><u>750.145p</u></a>  <a href="#"><u>750.145q</u></a>  <a href="#"><u>750.145r</u></a></p> <p><a href="#"><u>333.7401</u></a></p>	<p>The crimes include:</p> <ul style="list-style-type: none"> <li>- <b>Any conviction (felony or misdemeanor)</b> relating to neglect or abuse of a patient in connection with delivery of health care item or service</li> <li>- <b>Felony</b> conviction relating to health care fraud</li> <li>- <b>Felony</b> conviction relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance</li> <li>- Manufacturing, creating, delivering, or possessing with intent to manufacture, create, or deliver prescribing, or administering controlled substance controlled substance, prescription form, or counterfeit prescription form dispensing</li> </ul>
		<p><a href="#"><u>333.7411</u></a></p>	<p>Rec'd deferred adjudication for pleading guilty to a <b><u>felony</u></b> controlled substance offense.</p>

STATUTE	CRIME	MCL	DESCRIPTION
(3) when a plea of guilty or nolo contendere by the individual or entity has been accepted by a Federal, State, or local court; or (4) when the individual or entity has entered into participation in a first offender, deferred/delayed/suspended sentence, or other arrangement or program where judgment of conviction has been withheld, delayed or suspended		<a href="#"><u>333.7340</u></a>  <a href="#"><u>750.16</u></a>	-Selling, distributing, delivering, or furnishing product containing ephedrine or pseudoephedrine  -Adulteration; drugs or medicine injurious to health

## Section 2: Exclusions under Public Acts 27, 28 and 29 of 2006

### Tier One – Felony Crimes Involving Aggravated Assault, Force or Violence, Cruelty, Abuse and Neglect

#### 15 year exclusion

STATUTE	CRIME	MCL	DESCRIPTION
<p><b><u>Tier One – Felony</u></b></p> <p><b>330.1134a(1)(b)(i)-(vii)</b>  <b>333.20173a-1(1)(b)(i)-(vii)</b>  <b>400.734b(1)(a)(i)-(vii)</b></p> <p>Has been convicted of any of the following <b>felonies</b>, an attempt or conspiracy to commit any of those felonies, or any other state or federal crime that is similar to the felonies described under this subdivision, <b><u>other than a felony for a relevant crime described under 42 USC 1320a-7</u></b>, unless <b>15 years</b> have lapsed since the individual completed all the terms and conditions of his or her sentencing, parole, and probation for that [felony] conviction prior to the date of application for employment or clinical privileges or the date of the execution of the independent contract:</p> <p>Note: Clinical privileges do not apply to adult foster care facilities.</p>	<p>(i) a felony</p> <p>- that involves the intent to cause death or serious impairment of a body function,</p> <p>- that results in death or serious impairment of the body function,</p> <p>- that involves the use of force or violence, or</p> <p>- that involves the threat or the use of force or violence</p>	<a href="#">750.316</a> , <i>et seq</i>	Murder, 1 <sup>st</sup> degree
		<a href="#">750.81a</a> (3)	Assault and infliction of serious or aggravated injury with spouse or dating relationship; 2 <sup>nd</sup> or subsequent conviction
		<a href="#">750.81</a> (4)	Assault against a family member; 3 <sup>rd</sup> or subsequent offense  <b>NOTE:</b> Assault under Spouse Abuse Act, may receive deferred/delayed/suspended sentencing under Michigan's Second Chance Statute (MCL §769.4a) <b>Deferred/delayed/suspended sentences are not considered to be convictions under the Michigan law.</b>
		<a href="#">750.81c</a> (2) and (3)	Family independence (DHS) agency employee; felonious assault (without intent to commit murder or to inflict great bodily harm less than murder)
		<a href="#">750.81d</a>	Assaulting, battering, resisting, obstructing, opposing person performing duty (police officer, conservation officer, sheriff or deputy, constable, peace officer, firefighter, EMT).
		<a href="#">750.82</a>	Felonious assault; violation of subsection in weapon free school zone
		<a href="#">750.83</a>	Assault with intent to commit murder
		<a href="#">750.84</a>	Assault with intent to do great bodily harm less than murder
		<a href="#">750.86</a>	Assault with intent to maim
		<a href="#">750.91</a>	Attempt to murder



STATUTE	CRIME	MCL	DESCRIPTION
<b><u>Tier One -Felony</u></b> <b>(cont.)</b>  <b>330.1134a(1)(b)(i)-(vii)</b> <b>333.20173a-1(1)(b)(i)-(vii)</b> <b>400.734b(1)(a)(i)-(vii)</b>		<a href="#">750.529</a>	Armed robbery; use or possession of dangerous weapon; aggravated assault
		<a href="#">750.529a</a>	Carjacking
		<a href="#">750.530</a>	Robbery - Use of force or violence, assault or putting anyone present in fear during the commission of larceny of money or other property
	(ii) a felony involving cruelty or torture	<a href="#">750.50b(2)</a>	Willfully, maliciously and without just cause or excuse kills, tortures, mutilates, maims, disfigures, or poisons an animal
		<a href="#">750.85</a>	inflicts great bodily injury or severe mental pain or suffering with the intent to cause cruel or extreme physical or mental pain and suffering
		<a href="#">750.50(2)(b)(f)</a>	Second or subsequent findings of guilt re: animals
	(iii) a felony under chapter XXA of the Michigan Penal Code, 1931 PA 328, MCL 750.145m to 750.145r	<a href="#">750.145m</a> <a href="#">750.145n</a> <a href="#">750.145o</a> <a href="#">750.145p</a> <a href="#">750.145q</a> <a href="#">750.145r</a>	These fall under 42 USC 1320a-7 when the offense is committed in connection with the delivery of a health care item or service and the conviction occurs after August 21, 1996. <b>1<sup>st</sup>, 2<sup>nd</sup> degree</b>
	(iv) a felony involving criminal sexual conduct	<a href="#">750.520b</a>	Criminal sexual conduct, 1 <sup>st</sup> degree
		<a href="#">750.520c</a>	Criminal sexual conduct, 2 <sup>nd</sup> degree
		<a href="#">750.520d</a>	Criminal sexual conduct, 3 <sup>rd</sup> degree
	(v) a felony involving abuse or neglect	<a href="#">750.136b</a>	-Child abuse, 1 <sup>st</sup> and 2 <sup>nd</sup> degree
		See <a href="#">750.135</a> through <a href="#">750.145d(2)(b-f)</a>	Other felony crimes against minors
	(vi) a felony involving the use of a firearm or dangerous weapon	<a href="#">750.110a</a> (2)(a) 1 <sup>st</sup> degree	Felony involving home invasion armed with a dangerous weapon

Tier Two- All Other Felony Crimes			
10 year exclusion			
STATUTE	CRIME	MCL	DESCRIPTION
<p><b>MCL sections</b>  <b>330.1134a(1)(c)</b>  <b>333.20173a(1)(c)</b>  <b>400.734(1)(c)</b></p> <p>Has been convicted of a <b>felony</b> or an attempt or a 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 <b>10 years</b> 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.</p>	<p><b>All other felony convictions</b></p> <p>The crimes set forth in this part of the statute include all felony convictions <u>other than those described in Tier One or a relevant crime under 42 USC 1320a-7.</u></p> <p><u>Any felony conviction disqualifies an individual for at least 10 years.</u> The offenses listed are the most common occurrences.</p>	<a href="#">750.131(3)</a>	Felony; non-sufficient funds
		<a href="#">750.357</a>	Felony Larceny; from a person
		<a href="#">750.357b</a>	Felony Larceny; stealing the firearm of another person
		<a href="#">750.356</a>	Felony Larceny; money goods or chattel, a bank note, bank bill, bond, promissory note, due bill, bill of exchange or other bill, draft, order, or certificate, a book of accounts for or concerning money or goods due, to become due, or to be delivered
		<a href="#">750.356a</a>	Felony Larceny; from a motor vehicle
		<a href="#">750.356b</a>	Felony Larceny; breaking & entering a coin operated telephone
		<a href="#">750.356c</a>	Felony Larceny; retail fraud 1 <sup>st</sup> degree
		<a href="#">750.360</a>	Felony Larceny; places of abode, work, storage, conversance, worship & other places
		<a href="#">750.362</a>	Felony Larceny; by conversion
		<a href="#">750.110a(3)</a>	Felony Home invasion; 2 <sup>nd</sup> Degree
		<a href="#">750.174</a>	Embezzlement by agent, servant or employee, or trustee, bailee, or custodian
		<a href="#">750.176</a>	Embezzlement by administrator, executor or guardian
		<a href="#">750.177</a>	Embezzlement by chattel mortgagor, vendee or lessee

STATUTE	CRIME	MCL	DESCRIPTION
<b><u>Tier Two – Felony</u></b> <b>(cont.)</b> <b>MCL sections</b> <b>330.1134a(1)(c)</b> <b>333.20173a(1)(c)</b> <b>400.734(1)(c)</b>		<a href="#"><u>750.178</u></a>	Embezzlement of chattel mortgage, lease, or contract property by others
		<a href="#"><u>750.182</u></a>	Embezzlement by warehouseman or forwarder of property receipted for
		<a href="#"><u>750.180</u></a>	Embezzlement in bank, deposit, trust company, or credit union
		<a href="#"><u>750.535(2)</u></a> <a href="#"><u>750.535(3)</u></a>	Felony receiving/concealing stolen property or felony embezzlement
		<a href="#"><u>750.535(7)</u></a>	Felony receiving & concealing motor vehicle
		<a href="#"><u>750.350a</u></a>	Taking or retaining child by adoptive or natural parent
		<a href="#"><u>750.448</u></a>	Accosting & soliciting or prostitution – 2 <sup>nd</sup> or subsequent conviction
		<a href="#"><u>257.625</u></a>	Felony DUI
			All felony convictions for controlled substances <i>prior to August 21, 1996, the effective date of 42 USC 1320a-7</i>

## Tier Three – High Misdemeanor Crimes

### 10 year exclusion

<p><b>MCL sections</b>  <b>330.1134a(1)(d)(i)-(v)</b>  <b>333.20173a(1)(d)(i)-(v)</b>  <b>400.734a(1)(d)(i)-(v)</b></p> <p>Has been convicted of any of the following <b>misdemeanors</b>, 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 <b>10 years</b> immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract:</p>	(i) 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 href="#">750.81a(1)</a>  <a href="#">750.81a(2)</a>  <a href="#">750.81c</a>	<p>Assault and Battery with serious or aggravating injury with NO RELATIONSHIP</p> <p>Aggravated Assault with RELATIONSHIP</p> <p>Threats or assault against employee of family independence agency (DHS)</p>
	(ii) a misdemeanor under Chapter XXA of the Michigan Penal Code, 1931 PA 328, MCL 750.145m to 750.145r	<a href="#">750.145m</a> <a href="#">750.145n</a> <a href="#">750.145o</a> <a href="#">750.145p</a> <a href="#">750.145q</a> <a href="#">750.145r</a>	These statutory citations refer to <b>misdemeanor crimes committed against “vulnerable adults,”</b> <i>e.g.</i> , vulnerable adult abuse; <b>3<sup>rd</sup>, 4<sup>th</sup> degree</b>
	(iii) a misdemeanor involving criminal sexual conduct	<a href="#">750.520e</a>	-Criminal sexual conduct, 4 <sup>th</sup> degree; instance of sexual contact with another person that does not involve sexual penetration
	(iv) a misdemeanor involving cruelty or torture unless otherwise provided under subdivision (e)	<a href="#">750.50(2)(b)(f)</a>	-First conviction re: animals
		<a href="#">750.356c</a>	<i>Misdemeanor</i> Retail Fraud, 1 <sup>st</sup> Degree
			Any conviction stating “Felony reduced to a misdemeanor”

## Tier Four- Misdemeanor Crimes

### Five year exclusion

STATUTE	CRIME	MCL	DESCRIPTION
<b>MCL sections</b> <b>330.1134a(1)(e)(i)-(vii)</b> <b>333.20173a(1)(e)(i)-(vii)</b> <b>400.734a(1)(e)(i)-(vii)</b>  Has been convicted of any of the following <b>misdemeanors</b> , 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 the subdivision, within the <b>5 years</b> immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract:	(i) <b>a misdemeanor involving cruelty if committed by an individual who is less than 16 years of age</b>	<a href="#">750.49</a> <i>et seq</i>	The crime of “cruelty” involves cruel treatment of animals.
	(ii) <b>a misdemeanor involving home invasion</b>	<a href="#">750.110a(4)</a> <a href="#">750.115(1)</a>	Misdemeanor crime that typically involves “breaking and entering” or “entering without permission” into another person’s home, building, outside area or other abode.)
	(iii) <b>a misdemeanor involving embezzlement</b>	<a href="#">750.174</a>	Misdemeanor embezzlement by agent, servant or employee, or trustee, bailee, or custodian
		<a href="#">750.174a</a>	Person in relationship of trust with vulnerable adult
		<a href="#">750.535(4)</a>	Misdemeanor buying, receiving, possessing, concealing, or aiding in concealment of stolen, embezzled, or converted property or motor vehicle
	(iv) <b>a misdemeanor involving negligent homicide</b>	<a href="#">750.324</a>	Negligent homicide (careless or reckless driving that causes death.)
	(v) <b>a misdemeanor involving larceny</b>  “Larceny” is the legal description of the act of stealing; also referred to as “theft”	<a href="#">750.356a(2)(a)</a>	Misdemeanor Larceny; motor vehicle or trailers
		<a href="#">750.359</a>	Larceny from vacant dwelling
		<a href="#">750.360a</a>	Misdemeanor electronic or magnetic theft detection; shielding merchandise
		<a href="#">750.361</a>	Larceny or maliciously removing journal bearings or brasses
		<a href="#">750.362</a>	Larceny by conversion
		<a href="#">750.362a</a>	Misdemeanor larceny; rented motor vehicle, trailer or other tangible property

STATUTE	CRIME	MCL	DESCRIPTION
<b><u>Tier Four - Misdemeanor (cont.)</u></b> <b>MCL sections</b> <b>330.1134a(1)(e)(i)-(vii)</b> <b>333.20173a(1)(e)(i)-(vii)</b> <b>400.734a(1)(e)(i)-(vii)</b>	(vi) a misdemeanor of retail fraud in the second degree	<a href="#">750.356d</a>	“Retail fraud in the second degree” involves shoplifting property from a store that is offered for sale at a price of \$200 or more but less than \$1,000, or less than \$200 if the person has been previously convicted of any crime of theft.  Note: Misdemeanor retail fraud, 1 <sup>st</sup> degree- call the department
	(vii) 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)	<a href="#">750.81</a>  <a href="#">750.131(3)</a> <a href="#">333.20173a (8)</a>  <a href="#">750.181</a>	- Misdemeanor Assault or Assault and Battery  - Misdemeanor Non-Sufficient Funds  - Misdemeanor for providing false information in order to obtain employment in health care  - Embezzlement of property belonging to person and part owner

## Tier Five –Less Serious Misdemeanor Crimes

### Three year exclusion

<p><b>MCL sections</b>  <b>330.1134a(1)(f)(i)-(iii)</b>  <b>333.20173a(1)(f)(i)-(iii)</b>  <b>400.734a(1)(f)(i)-(iii)</b></p> <p>Has been convicted of any of the following <b>misdemeanors</b>, 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 <b>3 years</b> immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract:</p>	(i) a <b>misdemeanor for assault</b>	<p><a href="#"><u>750.81</u></a></p> <p><a href="#"><u>750.81c(1)</u></a></p> <p><a href="#"><u>769.4a</u></a></p>	<p>A person commits an “assault” if he/she attempts or threatens to hurt another. <b>Look for the words assault or simple assault without the word “battery.”</b></p> <p>assault against a family; <b>NOTE:</b> Assault under Spouse Abuse Act, may receive deferred adjudication under Michigan’s Second Chance Statute</p>
	(ii) a <b>misdemeanor of retail fraud in the third degree</b>	<a href="#"><u>750.356d (4)</u></a>	Retail fraud; 3 <sup>rd</sup> degree -shoplifting property from a store that is offered for sale at a price of less than \$200.
	(iii) a <b>misdemeanor under part 74</b>	<p><a href="#"><u>333.7401, et seq.</u></a></p> <p><a href="#"><u>333.7404</u></a></p> <p><a href="#"><u>750.16</u></a></p>	<p>A misdemeanor “under part 74” refers to any <u>misdemeanor</u> involving the creation, delivery, or possession with intent to manufacture or deliver a controlled substance.</p> <p><b>NOTE:</b> The Public Health Code provides for deferred adjudication as a 2<sup>nd</sup> Chance statute.</p>

**Tier Six–Misdemeanor Juvenile Crimes**  
**One Year Exclusion**

STATUTE	CRIME	MCL	DESCRIPTION
<b>MCL sections</b> <b>330.1134a(1)(g)(i)-(ii)</b> <b>333.20173a(1)(g)(i)-(ii)</b> <b>400.734a(1)(g)(i)-(ii)</b>  Has been convicted of any of the following <b>misdemeanors</b> , 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, <b>within the year</b> immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract:	(i) a misdemeanor under <b>Part 74</b> if the individual, at the time of conviction, is under the age of <b>18</b>		<b>2nd Chance Statute</b> • Holmes Youthful Trainee Act (HYTA)
	(ii) 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 <b>16</b>		<i>Please see above.</i>



**Miscellaneous Crimes**  
**Permanent Exclusion**

STATUTE	CRIME	MCL	DESCRIPTION
<b>MCL section</b> <b>330.1134a(1)(h)</b> <b>333.20173a(1)(h)</b> <b>400.734a(1)(h)</b>	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 section applies to an individual <b>if they have ever pleaded “not guilty by reason of insanity”</b> (NGRI) and it has been entered into the LIEN system.
<b>MCL section</b> <b>330.1134a(1)(i)</b> <b>333.20173a(1)(i)</b> <b>400.734a(1)(i)</b>	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 accordance with 42 USC 1395i-3 or 1396r.		This statutory citation refers to violations of those provisions of the federal Social Security Act that set forth requirements for skilled nursing facilities and nursing facilities, respectively.

# Table of Cases

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## 42 USC 1320a-7

*Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103 (1983). S.Ct. 986, 74 L.Ed.2d 845

Definition of the term “conviction” under 42 U.S.C. §1320a-7 is a question of federal, not state law despite the fact that the predicate offense and its punishment are defined by the law of the state.

*Pennington v. Thompson* 249 F.Supp.2d 931

Presence of aggravating circumstances

*Scheidler v. Secretary of Health and Human Services*, 2006 WL 689107 (S.D. Ohio)

State offense with deferred adjudication; exclusion from participation in Medicare, Medicaid, and all Federal health care programs.

*Tore v. Department of Health and Human Services*, Not Reported in F.Supp2d, 2005 WL (N.D. Ohio)

Treatment in lieu of conviction under state law is considered to be a conviction under 42 USC §1320a-7.

Turner v. The Inspector General, Department of Health and Human Services Departmental Appeals Board Decision, CR1176, 2004

Whether a crime is related to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance under 42 USC §1320a-7 must be a common sense determination based on all relevant facts.

## Assault

*People v. Ring*, 407 Mich. 196, 284 N.W.2d 718 (1979)

Definition of assault

*State of Michigan v. Branner*, 53 Mich.App.541, 220 N.W.2d 183 (1974)

Assault defined; assault with intent