



STATE OF MICHIGAN

DEPARTMENT OF COMMUNITY HEALTH
LANSING

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GOVERNOR

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TO: Michigan Schools Training Health Professionals

DATE: August 30, 2006

SUBJECT: Criminal Background Checks – Interim Policy to Exempt Students

Michigan Public Acts 27, 28 and 29 of 2006 requires that a health facility or agency that is a:

| | |
|------------------------------|-------------------------------------------|
| Psychiatric facility | Hospital that provides swing bed services |
| ICF/MR | Home for the Aged |
| Nursing home | Home Health Agency |
| County Medical Care Facility | Adult Foster Care Facility |
| Hospice | |

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 or adult foster care facility/agency until the health facility or agency conducts a criminal background check.

Students doing clinical training in a facility requiring criminal background checks will be given an exemption from the background check requirement during the clinical training period for a period of time not to exceed 120 hours.

If the clinical privileges of the student are to extend for more than 120 hours, a criminal background check must be completed within the first 40 hours of participation in the clinical experience.

The student must complete and sign the **Clinical Student Disclosure Statement** to acknowledge that he or she has not been convicted of a crime that would prohibit employment. The health professions school shall retain the signed **Clinical Student Disclosure Statement** at the school's administrative site for compliance under this policy.

The prohibited offenses and relevant time periods are listed below in the **Mandatory Exclusions for Specified Time Periods** section. Legal citations for the offenses can be located in each of the relevant Public Acts or in the Criminal Background Check Legal Guide which can be accessed at www.miltcpartnership.com.

If a criminal background check including relevant registry and database checks and a state and federal fingerprint criminal history record check is conducted and adverse results are found that are in contradiction to the **Clinical Student Disclosure Statement**, the student will be prohibited from participating in additional clinical experiences.

If any subsequent convictions occurs that are of such a nature to exempt the student from access to patients, clinical privileges will be terminated immediately.

**Clinical Student Disclosure Statement
To be Retained by the Educational Institution**

Student Name: _____ Date of Birth: _____

Educational Institution Name: _____

Training Program: _____

1. I certify that I have not been convicted of a crime or offense that prohibits me from being granted clinical privileges in a long-term care setting as required by P.A. 27, 28 and 29 of 2006 within the applicable time period prescribed by each crime.

Signature of Student

Date

2. I certify that I have not been the subject of an order or disposition under the Code of Criminal Procedure dealing with findings of "not guilty by reason of insanity" for any crime.

Signature of Student

Date

3. I certify that I have not been the subject of a state or federal agency substantiated finding of patient or resident neglect, abuse or misappropriation of property or any activity that caused my nurse aide certification to be "flagged".

Signature of Student

Date

4. I have listed below all offenses for which I have been convicted, including all terms and conditions of sentencing, parole and probation and any substantiated finding of patient or resident neglect, abuse or misappropriation of property.

Signature of Student

Date

| Conviction/Offense | Date of Conviction/Finding | City | State | Sentence | Date of Discharge |
|---------------------------|-----------------------------------|-------------|--------------|-----------------|--------------------------|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

5. I certify that I have reviewed the list of prohibited offenses as defined in P.A. 27, 28 and 29, and that the above list of my convictions and/or substantiated findings of patient or resident neglect, abuse or misappropriation of property (if any) is true, correct and complete to the best of my knowledge. I also understand that if the information is not accurate or complete, my clinical privileges will be withdrawn immediately. I understand that the facility or educational program denying my privileges based on information retained through a background check is provided immunity from any action brought by a Student due to the decision to remove clinical privileges.

Signature of Student

Date

**Criminal Background Check
Mandatory Exclusions for Specified Time Periods**

In order to be granted clinical privileges at any of the covered facilities, 15 years must have lapsed since the individual completed all the terms and conditions of sentencing, parole and probation for conviction of the following offenses:

Felony that involves the intent to cause death or serious impairment of a bodily function, that result in death or serious impairment of the bodily function that involves the use of force or violence or that involves the threat or the use of force or violence. This includes:

- Homicide
- Assault and infliction of serious injury
- Assault with intent to commit murder
- Assault with intent to do great bodily harm less than murder
- Assault with intent to maim
- -Attempt to murder

Felony involving cruelty or torture.

Felony of crime committed against “vulnerable adults” who because of age, developmental disability, mental illness or physical disability, require supervision or personal care or lack the personal and social skills required to live independently.

Felony involving criminal sexual conduct.

Felony involving abuse or neglect generally related to vulnerable adults or children which typically results in serious physical or mental harm to the vulnerable adult.

Felony involving the use of a firearm or dangerous weapon.

Felony involving the diversion or adulteration of a prescription drug or other medications.

In order to be granted clinical privileges at any of the covered facilities, 10 years must have lapsed since the individual completed all the terms and conditions of sentencing, parole and probation for conviction of the following offenses:

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.

Misdemeanor crime committed against “vulnerable adults”.

Misdemeanor involving criminal sexual conduct which involve instances of sexual contact with another person that does not involve sexual penetration and are typically known as “fourth degree criminal sexual conduct”.

Misdemeanor involving cruelty or torture (usually first conviction regarding animals).

Misdemeanor involving abuse or neglect in the third or fourth degree if the caregiver intentionally or recklessly causes “physical harm” to a vulnerable adult.

Third Driving Under the Influence (DUI) conviction.

In order to be granted clinical privileges at any of the covered facilities, 5 years must have lapsed since the individual completed all the terms and conditions of sentencing, parole and probation for conviction of the following offenses:

Misdemeanor involving cruelty if committed by an individual who is less than 16 years of age including cruel treatment of animals.

Misdemeanor involving home invasion that typically is described as “breaking and entering” into another person’s home.

Misdemeanor involving embezzlement which is a person who has taken money from another person who had entrusted the money with the wrongdoer, e.g. a store cashier.

Misdemeanor involving negligent homicide which is committed when a person engages in careless or reckless driving that causes death.

Misdemeanor involving larceny which is legally described as the act of stealing but it does not include shoplifting. An example would be theft from a building of an item that is not offered for sale.

Misdemeanor of retail fraud in the second degree which 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 or theft.

Any other misdemeanor involving assault, fraud, theft, or the possession or delivery of a controlled substance unless otherwise provided for under other subsections.

In order to be granted clinical privileges at any of the covered facilities, 3 years must have lapsed since the individual completed all the terms and conditions of sentencing, parole and probation for conviction of the following offenses:

Misdemeanor for assault which is defined as the individual attempting or threatening to hurt another.

Misdemeanor of retail fraud in the third degree which involved shoplifting property from a store that is offered for sale at a price of less than \$200.

Misdemeanor involving the creation, delivery or possession with intent to manufacture or deliver a controlled substance.

An individual cannot be granted clinical privileges at any of the covered facilities if within the year immediately preceding the date of application for employment or clinical privileges the individual was convicted of the following offenses:

Misdemeanor involving the creation, delivery or possession with intent to manufacture or deliver a controlled substance if the individual, at the time of conviction, is under the age of 18.

Misdemeanor for larceny or retail fraud in the second or third degree which involved shoplifting property from a store that is offered for sale at a price of less than \$200 if the individual, at the time of conviction, is under the age of 16.

Permanent Exclusions:

If the individual has ever pleaded “not guilty by reason of insanity” and that plea has been entered in the law enforcement information network (LEIN), the individual cannot work in long-term care.

If the individual has ever been the subject of a substantiated finding of neglect, abuse or misappropriation of property by a state or federal agency, the individual cannot work in long-term care. For example, an individual would be excluded if their nurse aide certification was “flagged”.

Clarifications on Legal Terminology

1 Criminal Sexual Conduct

Misdemeanor: Fourth Degree Criminal Sexual Conduct

Felony: First, Second and Third Degree Criminal Sexual Conduct

2 Cruelty and Torture to Animals

Misdemeanor: First Offense

Felony: More than one offense

3 DUI Convictions

Misdemeanor: Does not exclude individual from working in long-term care

Felony: Third DUI conviction. This felony requires 10 year exclusionary period between the Student’s discharge from state supervision to the date of the employment application or granting of clinical privileges.