

# SENATE BILL No. 675

December 15, 2015, Introduced by Senators HOPGOOD, MARLEAU, BIEDA, NOFS, KNEZEK and JOHNSON and referred to the Committee on Health Policy.

A bill to amend 1974 PA 258, entitled  
"Mental health code,"  
by amending section 134a (MCL 330.1134a), as amended by 2014 PA 72.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 134a. (1) Except as otherwise provided in subsection (2),  
2 a psychiatric facility or other facility defined in 42 USC 1396d(d)  
3 shall not employ, independently contract with, or grant clinical  
4 privileges to an individual who regularly has direct access to or  
5 provides direct services to patients or residents in the  
6 psychiatric facility or other facility defined in 42 USC 1396d(d)  
7 if the individual satisfies 1 or more of the following:

8           (a) Has been convicted of a relevant crime described under 42  
9 USC 1320a-7(a).

10           (b) Has been convicted of any of the following felonies, an  
11 attempt or conspiracy to commit any of those felonies, or any other

1 state or federal crime that is similar to the felonies described in  
2 this subdivision, other than a felony for a relevant crime  
3 described under 42 USC 1320a-7(a), unless 15 years have lapsed  
4 since the individual completed all of the terms and conditions of  
5 his or her sentencing, parole, and probation for that conviction  
6 ~~prior to~~ **BEFORE** the date of application for employment or clinical  
7 privileges or the date of the execution of the independent  
8 contract:

9 (i) A felony that involves the intent to cause death or  
10 serious impairment of a body function, that results in death or  
11 serious impairment of a body function, that involves the use of  
12 force or violence, or that involves the threat of the use of force  
13 or violence.

14 (ii) A felony involving cruelty or torture.

15 (iii) A felony under chapter XXA of the Michigan penal code,  
16 1931 PA 328, MCL 750.145m to 750.145r.

17 (iv) A felony involving criminal sexual conduct.

18 (v) A felony involving abuse or neglect.

19 (vi) A felony involving the use of a firearm or dangerous  
20 weapon.

21 (vii) A felony involving the diversion or adulteration of a  
22 prescription drug or other medications.

23 (c) Has been convicted of a felony or an attempt or conspiracy  
24 to commit a felony, other than a felony for a relevant crime  
25 described under 42 USC 1320a-7(a) or a felony described under  
26 subdivision (b), unless 10 years have lapsed since the individual  
27 completed all of the terms and conditions of his or her sentencing,

1 parole, and probation for that conviction ~~prior to~~ **BEFORE** the date  
2 of application for employment or clinical privileges or the date of  
3 the execution of the independent contract.

4 (d) Has been convicted of any of the following misdemeanors,  
5 other than a misdemeanor for a relevant crime described under 42  
6 USC 1320a-7(a), or a state or federal crime that is substantially  
7 similar to the misdemeanors described in this subdivision, within  
8 the 10 years immediately preceding the date of application for  
9 employment or clinical privileges or the date of the execution of  
10 the independent contract:

11 (i) A misdemeanor involving the use of a firearm or dangerous  
12 weapon with the intent to injure, the use of a firearm or dangerous  
13 weapon that results in a personal injury, or a misdemeanor  
14 involving the use of force or violence or the threat of the use of  
15 force or violence.

16 (ii) A misdemeanor under chapter XXA of the Michigan penal  
17 code, 1931 PA 328, MCL 750.145m to 750.145r.

18 (iii) A misdemeanor involving criminal sexual conduct.

19 (iv) A misdemeanor involving cruelty or torture unless  
20 otherwise provided under subdivision (e).

21 (v) A misdemeanor involving abuse or neglect.

22 (e) Has been convicted of any of the following misdemeanors,  
23 other than a misdemeanor for a relevant crime described under 42  
24 USC 1320a-7(a), or a state or federal crime that is substantially  
25 similar to the misdemeanors described in this subdivision, within  
26 the 5 years immediately preceding the date of application for  
27 employment or clinical privileges or the date of the execution of

1 the independent contract:

2 (i) A misdemeanor involving cruelty if committed by an  
3 individual who is less than 16 years of age.

4 (ii) A misdemeanor involving home invasion.

5 (iii) A misdemeanor involving embezzlement.

6 (iv) A misdemeanor involving negligent homicide or a violation  
7 of section 601d(1) of the Michigan vehicle code, ~~1940-1949~~ PA 300,  
8 MCL 257.601d.

9 (v) A misdemeanor involving larceny unless otherwise provided  
10 under subdivision (g).

11 (vi) A misdemeanor of retail fraud in the second degree unless  
12 otherwise provided under subdivision (g).

13 (vii) Any other misdemeanor involving assault, fraud, theft,  
14 or the possession or delivery of a controlled substance unless  
15 otherwise provided under subdivision (d), (f), or (g).

16 (f) Has been convicted of any of the following misdemeanors,  
17 other than a misdemeanor for a relevant crime described under 42  
18 USC 1320a-7(a), or a state or federal crime that is substantially  
19 similar to the misdemeanors described in this subdivision, within  
20 the 3 years immediately preceding the date of application for  
21 employment or clinical privileges or the date of the execution of  
22 the independent contract:

23 (i) A misdemeanor for assault if there was no use of a firearm  
24 or dangerous weapon and no intent to commit murder or inflict great  
25 bodily injury.

26 (ii) A misdemeanor of retail fraud in the third degree unless  
27 otherwise provided under subdivision (g).

1 (iii) A misdemeanor under part 74 of the public health code,  
2 1978 PA 368, MCL 333.7401 to 333.7461, unless otherwise provided  
3 under subdivision (g).

4 (g) Has been convicted of any of the following misdemeanors,  
5 other than a misdemeanor for a relevant crime described under 42  
6 USC 1320a-7(a), or a state or federal crime that is substantially  
7 similar to the misdemeanors described in this subdivision, within  
8 the year immediately preceding the date of application for  
9 employment or clinical privileges or the date of the execution of  
10 the independent contract:

11 (i) A misdemeanor under part 74 of the public health code,  
12 1978 PA 368, MCL 333.7401 to 333.7461, if the individual, at the  
13 time of conviction, is under the age of 18.

14 (ii) A misdemeanor for larceny or retail fraud in the second  
15 or third degree if the individual, at the time of conviction, is  
16 under the age of 16.

17 (h) Is the subject of an order or disposition under section  
18 16b of chapter IX of the code of criminal procedure, 1927 PA 175,  
19 MCL 769.16b.

20 (i) Engages in conduct that becomes the subject of a  
21 substantiated finding of neglect, abuse, or misappropriation of  
22 property by a state or federal agency ~~according to~~ **UNDER** an  
23 investigation conducted in accordance with 42 USC 1395i-3 or 1396r.

24 (2) Except as otherwise provided in this subsection, ~~or~~  
25 ~~subsection (5),~~ a psychiatric facility or other facility defined in  
26 42 USC 1396d(d) shall not employ, independently contract with, or  
27 grant privileges to an individual who regularly has direct access

1 to or provides direct services to patients or residents in the  
2 psychiatric facility or other facility defined in 42 USC 1396d(d)  
3 until the psychiatric facility or other facility defined in 42 USC  
4 1396d(d) or staffing agency has conducted a criminal history check  
5 in compliance with this section or received criminal history record  
6 information in compliance with ~~subsection (3) or (10)~~. **SUBSECTIONS**  
7 **(3) AND (6)**. This subsection and subsection (1) do not apply to any  
8 of the following:

9 (a) An individual who is employed by, under independent  
10 contract to, or granted clinical privileges in a psychiatric  
11 facility or other facility defined in 42 USC 1396d(d) before April  
12 1, 2006. On or before April 1, 2011, an individual who is exempt  
13 under this subdivision and who has not been the subject of a  
14 criminal history check conducted in compliance with this section  
15 shall provide the department of state police with a set of  
16 fingerprints and the department of state police shall input those  
17 fingerprints into the automated fingerprint identification system  
18 database established under ~~subsection (13)~~. **(9)**. An individual who  
19 is exempt under this subdivision is not limited to working within  
20 the psychiatric facility or other facility defined in 42 USC  
21 1396d(d) with which he or she is employed by, under independent  
22 contract to, or granted clinical privileges on April 1, 2006 but  
23 may transfer to another psychiatric facility or other facility  
24 defined in 42 USC 1396d(d), covered health facility, or adult  
25 foster care facility. If an individual who is exempt under this  
26 subdivision is subsequently convicted of a crime described under  
27 subsection (1)(a) ~~through~~ **TO** (g) or found to be the subject of a

1 substantiated finding described under subsection (1)(i) or an order  
2 or disposition described under subsection (1)(h), or is found to  
3 have been convicted of a relevant crime described under subsection  
4 (1)(a), then he or she is no longer exempt and shall be terminated  
5 from employment or denied employment or clinical privileges.

6 (b) An individual who is under an independent contract with a  
7 psychiatric facility or other facility defined in 42 USC 1396d(d)  
8 if he or she is not under the facility's control and the services  
9 for which he or she is contracted is not directly related to the  
10 provision of services to a patient or resident or if the services  
11 for which he or she is contracted allows for direct access to the  
12 patients or residents but is not performed on an ongoing basis.  
13 This exception includes, but is not limited to, an individual who  
14 is under an independent contract with the psychiatric facility or  
15 other facility defined in 42 USC 1396d(d) to provide utility,  
16 maintenance, construction, or communications services.

17 (3) An individual who applies for employment either as an  
18 employee or as an independent contractor or for clinical privileges  
19 with a psychiatric facility or other facility defined in 42 USC  
20 1396d(d) or a staffing agency and who has not been the subject of a  
21 criminal history check conducted in compliance with this section  
22 shall give written consent at the time of application for the  
23 department of state police to conduct a criminal history check  
24 under this section, along with identification acceptable to the  
25 department of state police. If the applicant has been the subject  
26 of a criminal history check conducted in compliance with this  
27 section, the applicant shall give written consent at the time of

1 application for the psychiatric facility or other facility defined  
2 in 42 USC 1396d(d) or staffing agency to obtain the criminal  
3 history record information as prescribed in subsection (4) from the  
4 ~~relevant licensing or regulatory department~~ **OF LICENSING AND**  
5 **REGULATORY AFFAIRS** and for the department of state police to  
6 conduct a criminal history check under this section if the  
7 requirements of subsection ~~(10)~~ **(6)** are not met and a request to  
8 the ~~federal bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION**  
9 to make a determination of the existence of any national criminal  
10 history pertaining to the applicant is necessary, along with  
11 identification acceptable to the department of state police. Upon  
12 receipt of the written consent to obtain the criminal history  
13 record information and identification required under this  
14 subsection, the psychiatric facility or other facility defined in  
15 42 USC 1396d(d) or staffing agency that has made a good-faith offer  
16 of employment or an independent contract or clinical privileges to  
17 the applicant shall request the criminal history record information  
18 from the ~~relevant licensing or regulatory department~~ **OF LICENSING**  
19 **AND REGULATORY AFFAIRS** and shall make a request regarding that  
20 applicant to the ~~relevant licensing or regulatory department~~ **OF**  
21 **LICENSING AND REGULATORY AFFAIRS** to conduct a check of all relevant  
22 registries in the manner required in subsection (4). If the  
23 requirements of subsection ~~(10)~~ **(6)** are not met and a request to  
24 the ~~federal bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION**  
25 to make a subsequent determination of the existence of any national  
26 criminal history pertaining to the applicant is necessary, the  
27 psychiatric facility or other facility defined in 42 USC 1396d(d)

1 or staffing agency shall proceed in the manner required in  
2 subsection (4). A staffing agency that employs an applicant who  
3 regularly has direct access to or provides direct services to  
4 patients or residents under an independent contract with a  
5 psychiatric facility or other facility defined in 42 USC 1396d(d)  
6 shall submit information regarding the criminal history check  
7 conducted by the staffing agency to the psychiatric facility or  
8 other facility defined in 42 USC 1396d(d) that has made a good-  
9 faith offer of independent contract to that applicant.

10 (4) Upon receipt of the written consent to conduct a criminal  
11 history check and identification required under subsection (3), a  
12 psychiatric facility or other facility defined in 42 USC 1396d(d)  
13 or staffing agency that has made a good-faith offer of employment  
14 or an independent contract or clinical privileges to the applicant  
15 shall make a request to the department of state police to conduct a  
16 criminal history check on the applicant, to input the applicant's  
17 fingerprints into the automated fingerprint identification system  
18 database, and to forward the applicant's fingerprints to the  
19 ~~federal bureau of investigation.~~ **FEDERAL BUREAU OF INVESTIGATION.**  
20 The department of state police shall request the ~~federal bureau of~~  
21 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** to make a  
22 determination of the existence of any national criminal history  
23 pertaining to the applicant. The applicant shall provide the  
24 department of state police with a set of fingerprints. The request  
25 shall be made in a manner prescribed by the department of state  
26 police. The psychiatric facility or other facility defined in 42  
27 USC 1396d(d) or staffing agency shall make the written consent and

1 identification available to the department of state police. The  
2 psychiatric facility or other facility defined in 42 USC 1396d(d)  
3 or staffing agency shall make a request regarding that applicant to  
4 the ~~relevant licensing or regulatory~~ department **OF LICENSING AND**  
5 **REGULATORY AFFAIRS** to conduct a check of all relevant registries  
6 established under federal and state law and regulations for any  
7 substantiated findings of abuse, neglect, or misappropriation of  
8 property. If the department of state police or the ~~federal bureau~~  
9 ~~of investigation~~ **FEDERAL BUREAU OF INVESTIGATION** charges a fee for  
10 conducting the criminal history check, the psychiatric facility or  
11 other facility defined in 42 USC 1396d(d) or staffing agency shall  
12 pay the cost of the charge. The psychiatric facility or other  
13 facility defined in 42 USC 1396d(d) or staffing agency shall not  
14 seek reimbursement for a charge imposed by the department of state  
15 police or the ~~federal bureau of investigation~~ **FEDERAL BUREAU OF**  
16 **INVESTIGATION** from the individual who is the subject of the  
17 criminal history check. A prospective employee or a prospective  
18 independent contractor covered under this section may not be  
19 charged for the cost of a criminal history check required under  
20 this section. The department of state police shall conduct a  
21 criminal history check on the applicant named in the request. The  
22 department of state police shall provide the department **OF**  
23 **LICENSING AND REGULATORY AFFAIRS** with a written report of the  
24 criminal history check conducted under this subsection. The report  
25 shall contain any criminal history record information on the  
26 applicant maintained by the department of state police. The  
27 department of state police shall provide the results of the ~~federal~~

1 ~~bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION**  
2 determination to the department **OF LICENSING AND REGULATORY AFFAIRS**  
3 within 30 days after the request is made. If the requesting  
4 psychiatric facility or other facility defined in 42 USC 1396d(d)  
5 or staffing agency is not a state department or agency and if  
6 criminal history record information is disclosed on the written  
7 report of the criminal history check or the ~~federal bureau of~~  
8 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** determination that  
9 resulted in a conviction, the department **OF LICENSING AND**  
10 **REGULATORY AFFAIRS** shall notify the psychiatric facility or other  
11 facility defined in 42 USC 1396d(d) or staffing agency and the  
12 applicant in writing of the type of crime disclosed on the written  
13 report of the criminal history check or the ~~federal bureau of~~  
14 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** determination without  
15 disclosing the details of the crime. Any charges imposed by the  
16 department of state police or the ~~federal bureau of investigation~~  
17 **FEDERAL BUREAU OF INVESTIGATION** for conducting a criminal history  
18 check or making a determination under this subsection shall be paid  
19 in the manner required under this subsection. The notice shall  
20 include a statement that the applicant has a right to appeal the  
21 information relied upon by the psychiatric facility or other  
22 facility defined in 42 USC 1396d(d) or staffing agency regarding  
23 his or her employment eligibility based on the criminal history  
24 check. The notice shall also include information regarding where to  
25 file and describing the appellate procedures established under  
26 section 20173b of the public health code, 1978 PA 368, MCL  
27 333.20173b.

~~1 (5) If a psychiatric facility or other facility defined in 42  
2 USC 1396d(d) determines it necessary to employ or grant clinical  
3 privileges to an applicant before receiving the results of the  
4 applicant's criminal history check or criminal history record  
5 information under this section, the psychiatric facility or other  
6 facility defined in 42 USC 1396d(d) may conditionally employ or  
7 grant conditional clinical privileges to the individual if all of  
8 the following apply:~~

~~9 (a) The psychiatric facility or other facility defined in 42  
10 USC 1396d(d) requests the criminal history check or criminal  
11 history record information under this section upon conditionally  
12 employing or conditionally granting clinical privileges to the  
13 individual.~~

~~14 (b) The individual signs a statement in writing that indicates  
15 all of the following:~~

~~16 (i) That he or she has not been convicted of 1 or more of the  
17 crimes that are described in subsection (1)(a) through (g) within  
18 the applicable time period prescribed by each subdivision  
19 respectively.~~

~~20 (ii) That he or she is not the subject of an order or  
21 disposition described in subsection (1)(h).~~

~~22 (iii) That he or she has not been the subject of a  
23 substantiated finding as described in subsection (1)(i).~~

~~24 (iv) The individual agrees that, if the information in the  
25 criminal history check conducted under this section does not  
26 confirm the individual's statements under subparagraphs (i) through  
27 (iii), his or her employment or clinical privileges will be~~

1 ~~terminated by the psychiatric facility or other facility defined in~~  
2 ~~42 USC 1396d(d) as required under subsection (1) unless and until~~  
3 ~~the individual appeals and can prove that the information is~~  
4 ~~incorrect.~~

5 ~~—— (v) That he or she understands the conditions described in~~  
6 ~~subparagraphs (i) through (iv) that result in the termination of~~  
7 ~~his or her employment or clinical privileges and that those~~  
8 ~~conditions are good cause for termination.~~

9 ~~—— (c) Except as otherwise provided in this subdivision, the~~  
10 ~~psychiatric facility or other facility defined in 42 USC 1396d(d)~~  
11 ~~does not permit the individual to have regular direct access to or~~  
12 ~~provide direct services to patients or residents in the psychiatric~~  
13 ~~facility or other facility defined in 42 USC 1396d(d) without~~  
14 ~~supervision until the criminal history check or criminal history~~  
15 ~~record information is obtained and the individual is eligible for~~  
16 ~~that employment or clinical privileges. If required under this~~  
17 ~~subdivision, the psychiatric facility or other facility defined in~~  
18 ~~42 USC 1396d(d) shall provide on-site supervision of an individual~~  
19 ~~in the facility on a conditional basis under this subsection by an~~  
20 ~~individual who has undergone a criminal history check conducted in~~  
21 ~~compliance with this section. A psychiatric facility or other~~  
22 ~~facility defined in 42 USC 1396d(d) may permit an individual in the~~  
23 ~~facility on a conditional basis under this subsection to have~~  
24 ~~regular direct access to or provide direct services to patients or~~  
25 ~~residents in the psychiatric facility or other facility defined in~~  
26 ~~42 USC 1396d(d) without supervision if all of the following~~  
27 ~~conditions are met:~~

1 ~~—— (i) The psychiatric facility or other facility defined in 42~~  
2 ~~USC 1396d(d), at its own expense and before the individual has~~  
3 ~~direct access to or provides direct services to patients or~~  
4 ~~residents of the psychiatric facility or other facility defined in~~  
5 ~~42 USC 1396d(d), conducts a search of public records on that~~  
6 ~~individual through the internet criminal history access tool~~  
7 ~~maintained by the department of state police and the results of~~  
8 ~~that search do not uncover any information that would indicate that~~  
9 ~~the individual is not eligible to have regular direct access to or~~  
10 ~~provide direct services to patients or residents under this~~  
11 ~~section.~~

12 ~~—— (ii) Before the individual has direct access to or provides~~  
13 ~~direct services to patients or residents of the psychiatric~~  
14 ~~facility or other facility defined in 42 USC 1396d(d), the~~  
15 ~~individual signs a statement in writing that he or she has resided~~  
16 ~~in this state without interruption for at least the immediately~~  
17 ~~preceding 12 month period.~~

18 ~~—— (iii) If applicable, the individual provides to the department~~  
19 ~~of state police a set of fingerprints on or before the expiration~~  
20 ~~of 10 business days following the date the individual was~~  
21 ~~conditionally employed or granted conditional clinical privileges~~  
22 ~~under this subsection.~~

23 ~~—— (6) The department shall develop and distribute a model form~~  
24 ~~for the statements required under subsection (5) (b) and (c). The~~  
25 ~~department shall make the model form available to psychiatric~~  
26 ~~facilities or other facility defined in 42 USC 1396d(d) subject to~~  
27 ~~this section upon request at no charge.~~

1 ~~—— (7) If an individual is employed as a conditional employee or~~  
2 ~~is granted conditional clinical privileges under subsection (5),~~  
3 ~~and the information under subsection (3) or report under subsection~~  
4 ~~(4) does not confirm the individual's statement under subsection~~  
5 ~~(5) (b) (i) through (iii), the psychiatric facility or other facility~~  
6 ~~defined in 42 USC 1396d(d) shall terminate the individual's~~  
7 ~~employment or clinical privileges as required by subsection (1).~~

8 ~~—— (8) An individual who knowingly provides false information~~  
9 ~~regarding his or her identity, criminal convictions, or~~  
10 ~~substantiated findings on a statement described in subsection~~  
11 ~~(5) (b) (i) through (iii) is guilty of a misdemeanor punishable by~~  
12 ~~imprisonment for not more than 93 days or a fine of not more than~~  
13 ~~\$500.00, or both.~~

14 (5) ~~(9)~~—A psychiatric facility or other facility defined in 42  
15 USC 1396d(d) or staffing agency shall use criminal history record  
16 information obtained under subsection (3) or (4) only for the  
17 purpose of evaluating an applicant's qualifications for employment,  
18 an independent contract, or clinical privileges in the position for  
19 which he or she has applied. ~~and for the purposes of subsections~~  
20 ~~(5) and (7).~~—A psychiatric facility or other facility defined in 42  
21 USC 1396d(d) or staffing agency or an employee of the psychiatric  
22 facility or other facility defined in 42 USC 1396d(d) or staffing  
23 agency shall not disclose criminal history record information  
24 obtained under subsection (3) or (4) to a person who is not  
25 directly involved in evaluating the applicant's qualifications for  
26 employment, an independent contract, or clinical privileges. An  
27 individual who knowingly uses or disseminates the criminal history

1 record information obtained under subsection (3) or (4) in  
2 violation of this subsection is guilty of a misdemeanor punishable  
3 by imprisonment for not more than 93 days or a fine of not more  
4 than \$1,000.00, or both. Except for a knowing or intentional  
5 release of false information, a psychiatric facility or other  
6 facility defined in 42 USC 1396d(d) or staffing agency has no  
7 liability in connection with a criminal history check conducted in  
8 compliance with this section or the release of criminal history  
9 record information under this subsection.

10 (6) ~~(10)~~ Upon consent of an applicant as required in  
11 subsection (3) and upon request from a psychiatric facility or  
12 other facility defined in 42 USC 1396d(d) or staffing agency that  
13 has made a good-faith offer of employment or an independent  
14 contract or clinical privileges to the applicant, the ~~relevant~~  
15 ~~licensing or regulatory~~ department **OF LICENSING AND REGULATORY**  
16 **AFFAIRS** shall review the criminal history record information, if  
17 any, and notify the requesting psychiatric facility or other  
18 facility defined in 42 USC 1396d(d) or staffing agency of the  
19 information in the manner prescribed in subsection (4). Until the  
20 ~~federal bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION**  
21 implements an automatic notification system similar to the system  
22 required of the state police under subsection ~~(13)~~ **(9)** and federal  
23 regulations allow the federal criminal record to be used for  
24 subsequent authorized uses, as determined in an order issued by the  
25 department **OF LICENSING AND REGULATORY AFFAIRS**, a covered health or  
26 staffing agency facility may rely on the criminal history record  
27 information provided by the ~~relevant licensing or regulatory~~

1 department **OF LICENSING AND REGULATORY AFFAIRS** under this  
2 subsection and a request to the ~~federal bureau of investigation~~  
3 **FEDERAL BUREAU OF INVESTIGATION** to make a subsequent determination  
4 of the existence of any national criminal history pertaining to the  
5 applicant is not necessary if all of the following requirements are  
6 met:

7 (a) The criminal history check was conducted during the  
8 immediately preceding 12-month period.

9 (b) The applicant has been continuously employed by a  
10 psychiatric facility or other facility defined in 42 USC 1396d(d),  
11 covered health facility, or adult foster care facility or the  
12 staffing agency since the criminal history check was conducted in  
13 compliance with this section or meets the continuous employment  
14 requirement of this subdivision other than being on layoff status  
15 for less than 1 year from a psychiatric facility or other facility  
16 defined in 42 USC 1396d(d), covered health facility, or adult  
17 foster care facility.

18 (c) The applicant can provide evidence acceptable to the  
19 ~~relevant licensing or regulatory~~ department **OF LICENSING AND**  
20 **REGULATORY AFFAIRS** that he or she has been a resident of this state  
21 for the immediately preceding 12-month period.

22 (7) ~~(11)~~As a condition of continued employment, each  
23 employee, independent contractor, or individual granted clinical  
24 privileges shall do each of the following:

25 (a) Agree in writing to report to the psychiatric facility or  
26 other facility defined in 42 USC 1396d(d) or staffing agency  
27 immediately upon being arraigned for 1 or more of the criminal

1 offenses listed in subsection (1)(a) ~~through~~**TO** (g), upon being  
2 convicted of 1 or more of the criminal offenses listed in  
3 subsection (1)(a) ~~through~~**TO** (g), upon becoming the subject of an  
4 order or disposition described under subsection (1)(h), and upon  
5 being the subject of a substantiated finding of neglect, abuse, or  
6 misappropriation of property as described in subsection (1)(i).  
7 Reporting of an arraignment under this subdivision is not cause for  
8 termination or denial of employment.

9 (b) If a set of fingerprints is not already on file with the  
10 department of state police, provide the department of state police  
11 with a set of fingerprints.

12 (8) ~~(12)~~—In addition to sanctions set forth in this act, a  
13 licensee, owner, administrator, or operator of a psychiatric  
14 facility or other facility defined in 42 USC 1396d(d) or staffing  
15 agency who knowingly and willfully fails to conduct the criminal  
16 history checks as required under this section is guilty of a  
17 misdemeanor punishable by imprisonment for not more than 1 year or  
18 a fine of not more than \$5,000.00, or both.

19 (9) ~~(13)~~—In collaboration with the department of state police,  
20 the department of technology, management, and budget shall  
21 establish and maintain an automated fingerprint identification  
22 system database that would allow the department of state police to  
23 store and maintain all fingerprints submitted under this section  
24 and would provide for an automatic notification if and when a  
25 subsequent criminal arrest fingerprint card submitted into the  
26 system matches a set of fingerprints previously submitted under  
27 this section. Upon notification, the department of state police

1 shall immediately notify the department **OF LICENSING AND REGULATORY**  
2 **AFFAIRS** and the department **OF LICENSING AND REGULATORY AFFAIRS**  
3 shall immediately contact each respective psychiatric facility or  
4 other facility defined in 42 USC 1396d(d) or staffing agency with  
5 which that individual is associated. Information in the database  
6 established under this subsection is confidential, is not subject  
7 to disclosure under the freedom of information act, 1976 PA 442,  
8 MCL 15.231 to 15.246, and shall not be disclosed to any person  
9 except for purposes of this act or for law enforcement purposes.

10 (10) ~~(14)~~—The department **OF LICENSING AND REGULATORY AFFAIRS**  
11 shall maintain an electronic web-based system to assist psychiatric  
12 facilities or other facility defined in 42 USC 1396d(d) and  
13 staffing agencies required to check relevant registries and conduct  
14 criminal history checks of its employees and independent  
15 contractors, and individuals granted privileges and to provide for  
16 an automated notice to those psychiatric facilities or other  
17 facility defined in 42 USC 1396d(d) and staffing agencies for those  
18 individuals inputted in the system who, since the initial criminal  
19 history check, have been convicted of a disqualifying offense or  
20 have been the subject of a substantiated finding of abuse, neglect,  
21 or misappropriation of property. The department **OF LICENSING AND**  
22 **REGULATORY AFFAIRS** may charge a staffing agency a 1-time set-up fee  
23 of up to \$100.00 for access to the electronic web-based system  
24 under this section.

25 (11) ~~(15)~~—As used in this section:

26 (a) "Adult foster care facility" means an adult foster care  
27 facility licensed under the adult foster care facility licensing

1 act, 1979 PA 218, MCL 400.701 to 400.737.

2 (b) "Convicted" means either of the following:

3 (i) For a crime that is not a relevant crime, a final  
4 conviction, the payment of a fine, a plea of guilty or nolo  
5 contendere if accepted by the court, or a finding of guilt for a  
6 criminal law violation or a juvenile adjudication or disposition by  
7 the juvenile division of probate court or family division of  
8 circuit court for a violation that if committed by an adult would  
9 be a crime.

10 (ii) For a relevant crime described under 42 USC 1320a-7(a),  
11 convicted means that term as defined in 42 USC 1320a-7.

12 (c) "Covered health facility" means a nursing home, county  
13 medical care facility, hospice, hospital that provides swing bed  
14 services, or home for the aged licensed under article 17 of the  
15 public health code, 1978 PA 368, MCL 333.20101 to 333.22260, or  
16 home health agency.

17 (d) "Criminal history check conducted in compliance with this  
18 section" includes a criminal history check conducted under this  
19 section, under section 20173a of the public health code, 1978 PA  
20 ~~3658, 368~~, MCL 333.20173a, or under section 34b of the adult foster  
21 care facility licensing act, 1979 PA 218, MCL 400.734b.

22 (e) "Direct access" means access to a patient or resident or  
23 to a patient's or resident's property, financial information,  
24 medical records, treatment information, or any other identifying  
25 information.

26 (f) "Home health agency" means a person certified by ~~medicare~~  
27 **MEDICARE** whose business is to provide to individuals in their

1 places of residence other than in a hospital, nursing home, or  
2 county medical care facility 1 or more of the following services:  
3 nursing services, therapeutic services, social work services,  
4 homemaker services, home health aide services, or other related  
5 services.

6 (g) "Independent contract" means a contract entered into by a  
7 health facility or agency with an individual who provides the  
8 contracted services independently or a contract entered into by a  
9 health facility or agency with a staffing agency that complies with  
10 the requirements of this section to provide the contracted services  
11 to the psychiatric facility or other facility defined in 42 USC  
12 1396d(d) on behalf of the staffing agency.

13 (h) "Medicare" means benefits under the federal ~~medicare~~  
14 **MEDICARE** program established under title XVIII of the social  
15 security act, 42 USC 1395 to ~~1395kkk-1.1395lll~~.

16 (i) "Staffing agency" means an entity that recruits candidates  
17 and provides temporary and permanent qualified staffing for  
18 psychiatric facilities or other facility defined in 42 USC  
19 1396d(d), including independent contractors.

20 (j) "Under the facility's control" means an individual  
21 employed by or under independent contract with a psychiatric  
22 facility or other facility defined in 42 USC 1396d(d) for whom the  
23 psychiatric facility or other facility defined in 42 USC 1396d(d)  
24 does both of the following:

25 (i) Determines whether the individual who has access to  
26 patients or residents may provide care, treatment, or other similar  
27 support service functions to patients or residents served by the

1 psychiatric facility or other facility defined in 42 USC 1396d(d).

2 (ii) Directs or oversees 1 or more of the following:

3 (A) The policy or procedures the individual must follow in  
4 performing his or her duties.

5 (B) The tasks performed by the individual.

6 (C) The individual's work schedule.

7 (D) The supervision or evaluation of the individual's work or  
8 job performance, including imposing discipline or granting  
9 performance awards.

10 (E) The compensation the individual receives for performing  
11 his or her duties.

12 (F) The conditions under which the individual performs his or  
13 her duties.

14 Enacting section 1. This amendatory act takes effect 90 days  
15 after the date it is enacted into law.