

HOUSE BILL NO. 4255

February 26, 2019, Introduced by Reps. Filler, Anthony, Pagan, Wozniak, Bolden, Hope, Markkanen, Elder, Manoogian, Liberati, Shannon, Ellison, Clemente, Gay-Dagnogo, Crawford, Sabo, Sneller, Yancey, Kuppa, Hood, Sowerby, Stone, Cynthia Johnson, Farrington, Vaupel, Yaroach, Whitsett, Lasinski, Calley, Cherry and Coleman and referred to the Committee on Families, Children, and Seniors.

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



1 psychiatric facility or other facility defined in 42 USC 1396d(d)
2 if the individual satisfies 1 or more of the following:

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

5 (b) Has been convicted of any of the following felonies, an
6 attempt or conspiracy to commit any of those felonies, or any other
7 state or federal crime that is similar to the felonies described in
8 this subdivision, other than a felony for a relevant crime
9 described under 42 USC 1320a-7(a), unless 15 years have lapsed
10 since the individual completed all of the terms and conditions of
11 his or her sentencing, parole, and probation for that conviction
12 prior to the date of application for employment or clinical
13 privileges or the date of the execution of the independent
14 contract:

15 (i) A felony that involves the intent to cause death or serious
16 impairment of a body function, that results in death or serious
17 impairment of a body function, that involves the use of force or
18 violence, or that involves the threat of the use of force or
19 violence.

20 (ii) A felony involving cruelty or torture.

21 (iii) A felony under chapter XXA of the Michigan penal code,
22 1931 PA 328, MCL 750.145m to ~~750.145r~~. **750.145s.**

23 (iv) A felony involving criminal sexual conduct.

24 (v) A felony involving abuse or neglect.

25 (vi) A felony involving the use of a firearm or dangerous
26 weapon.

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

29 (c) Has been convicted of a felony or an attempt or conspiracy



1 to commit a felony, other than a felony for a relevant crime
2 described under 42 USC 1320a-7(a) or a felony described under
3 subdivision (b), unless 10 years have lapsed since the individual
4 completed all of the terms and conditions of his or her sentencing,
5 parole, and probation for that conviction prior to the date of
6 application for employment or clinical privileges or the date of
7 the execution of the independent contract.

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

15 (i) A misdemeanor involving the use of a firearm or dangerous
16 weapon with the intent to injure, the use of a firearm or dangerous
17 weapon that results in a personal injury, or a misdemeanor
18 involving the use of force or violence or the threat of the use of
19 force or violence.

20 (ii) A misdemeanor under chapter XXA of the Michigan penal
21 code, 1931 PA 328, MCL 750.145m to ~~750.145r~~. **750.145s.**

22 (iii) A misdemeanor involving criminal sexual conduct.

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

25 (v) A misdemeanor involving abuse or neglect.

26 (e) Has been convicted of any of the following misdemeanors,
27 other than a misdemeanor for a relevant crime described under 42
28 USC 1320a-7(a), or a state or federal crime that is substantially
29 similar to the misdemeanors described in this subdivision, within



1 the 5 years immediately preceding the date of application for
2 employment or clinical privileges or the date of the execution of
3 the independent contract:

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

6 (ii) A misdemeanor involving home invasion.

7 (iii) A misdemeanor involving embezzlement.

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

11 (v) A misdemeanor involving larceny unless otherwise provided
12 under subdivision (g).

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

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

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

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

28 (ii) A misdemeanor of retail fraud in the third degree unless



1 otherwise provided under subdivision (g).

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

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

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

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

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

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

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



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

7 (a) An individual who is employed by, under independent
8 contract to, or granted clinical privileges in a psychiatric
9 facility or other facility defined in 42 USC 1396d(d) before April
10 1, 2006. On or before April 1, 2011, an individual who is exempt
11 under this subdivision and who has not been the subject of a
12 criminal history check conducted in compliance with this section
13 shall provide the department of state police with a set of
14 fingerprints and the department of state police shall input those
15 fingerprints into the automated fingerprint identification system
16 database established under subsection (13). An individual who is
17 exempt under this subdivision is not limited to working within the
18 psychiatric facility or other facility defined in 42 USC 1396d(d)
19 with which he or she is employed by, under independent contract to,
20 or granted clinical privileges on April 1, 2006 but may transfer to
21 another psychiatric facility or other facility defined in 42 USC
22 1396d(d), covered health facility, or adult foster care facility.
23 If an individual who is exempt under this subdivision is
24 subsequently convicted of a crime described under subsection (1)(a)
25 through (g) or found to be the subject of a substantiated finding
26 described under subsection (1)(i) or an order or disposition
27 described under subsection (1)(h), or is found to have been
28 convicted of a relevant crime described under subsection (1)(a),
29 then he or she is no longer exempt and ~~shall~~**must** be terminated



1 from employment or denied employment or clinical privileges.

2 (b) An individual who is under an independent contract with a
3 psychiatric facility or other facility defined in 42 USC 1396d(d)
4 if he or she is not under the facility's control and the services
5 for which he or she is contracted is not directly related to the
6 provision of services to a patient or resident or if the services
7 for which he or she is contracted allows for direct access to the
8 patients or residents but is not performed on an ongoing basis.

9 This exception includes, but is not limited to, an individual who
10 is under an independent contract with the psychiatric facility or
11 other facility defined in 42 USC 1396d(d) to provide utility,
12 maintenance, construction, or communications services.

13 (3) An individual who applies for employment either as an
14 employee or as an independent contractor or for clinical privileges
15 with a psychiatric facility or other facility defined in 42 USC
16 1396d(d) or a staffing agency and who has not been the subject of a
17 criminal history check conducted in compliance with this section
18 shall give written consent at the time of application for the
19 department of state police to conduct a criminal history check
20 under this section, along with identification acceptable to the
21 department of state police. If the applicant has been the subject
22 of a criminal history check conducted in compliance with this
23 section, the applicant shall give written consent at the time of
24 application for the psychiatric facility or other facility defined
25 in 42 USC 1396d(d) or staffing agency to obtain the criminal
26 history record information as prescribed in subsection (4) from the
27 relevant licensing or regulatory department and for the department
28 of state police to conduct a criminal history check under this
29 section if the requirements of subsection (10) are not met and a



1 request to the ~~federal bureau of investigation~~ **Federal Bureau of**
2 **Investigation** to make a determination of the existence of any
3 national criminal history pertaining to the applicant is necessary,
4 along with identification acceptable to the department of state
5 police. Upon receipt of the written consent to obtain the criminal
6 history record information and identification required under this
7 subsection, the psychiatric facility or other facility defined in
8 42 USC 1396d(d) or staffing agency that has made a good-faith offer
9 of employment or an independent contract or clinical privileges to
10 the applicant shall request the criminal history record information
11 from the relevant licensing or regulatory department and shall make
12 a request regarding that applicant to the relevant licensing or
13 regulatory department to conduct a check of all relevant registries
14 in the manner required in subsection (4). If the requirements of
15 subsection (10) are not met and a request to the ~~federal bureau of~~
16 ~~investigation~~ **Federal Bureau of Investigation** to make a subsequent
17 determination of the existence of any national criminal history
18 pertaining to the applicant is necessary, the psychiatric facility
19 or other facility defined in 42 USC 1396d(d) or staffing agency
20 shall proceed in the manner required in subsection (4). A staffing
21 agency that employs an applicant who regularly has direct access to
22 or provides direct services to patients or residents under an
23 independent contract with a psychiatric facility or other facility
24 defined in 42 USC 1396d(d) shall submit information regarding the
25 criminal history check conducted by the staffing agency to the
26 psychiatric facility or other facility defined in 42 USC 1396d(d)
27 that has made a good-faith offer of independent contract to that
28 applicant.

29 (4) Upon receipt of the written consent to conduct a criminal

1 history check and identification required under subsection (3), a
2 psychiatric facility or other facility defined in 42 USC 1396d(d)
3 or staffing agency that has made a good-faith offer of employment
4 or an independent contract or clinical privileges to the applicant
5 shall make a request to the department of state police to conduct a
6 criminal history check on the applicant, to input the applicant's
7 fingerprints into the automated fingerprint identification system
8 database, and to forward the applicant's fingerprints to the

9 ~~federal bureau of investigation.~~ **Federal Bureau of Investigation.**

10 The department of state police shall request the ~~federal bureau of~~
11 ~~investigation~~ **Federal Bureau of Investigation** to make a
12 determination of the existence of any national criminal history
13 pertaining to the applicant. The applicant shall provide the
14 department of state police with a set of fingerprints. The request
15 ~~shall~~ **must** be made in a manner prescribed by the department of
16 state police. The psychiatric facility or other facility defined in
17 42 USC 1396d(d) or staffing agency shall make the written consent
18 and identification available to the department of state police. The
19 psychiatric facility or other facility defined in 42 USC 1396d(d)
20 or staffing agency shall make a request regarding that applicant to
21 the relevant licensing or regulatory department to conduct a check
22 of all relevant registries established under federal and state law
23 and regulations for any substantiated findings of abuse, neglect,
24 or misappropriation of property. If the department of state police
25 or the ~~federal bureau of investigation~~ **Federal Bureau of**
26 **Investigation** charges a fee for conducting the criminal history
27 check, the psychiatric facility or other facility defined in 42 USC
28 1396d(d) or staffing agency shall pay the cost of the charge. The
29 psychiatric facility or other facility defined in 42 USC 1396d(d)



1 or staffing agency shall not seek reimbursement for a charge
2 imposed by the department of state police or the ~~federal bureau of~~
3 ~~investigation~~ **Federal Bureau of Investigation** from the individual
4 who is the subject of the criminal history check. A prospective
5 employee or a prospective independent contractor covered under this
6 section may not be charged for the cost of a criminal history check
7 required under this section. The department of state police shall
8 conduct a criminal history check on the applicant named in the
9 request. The department of state police shall provide the
10 department with a written report of the criminal history check
11 conducted under this subsection. The report shall contain any
12 criminal history record information on the applicant maintained by
13 the department of state police. The department of state police
14 shall provide the results of the ~~federal bureau of investigation~~
15 **Federal Bureau of Investigation** determination to the department
16 within 30 days after the request is made. If the requesting
17 psychiatric facility or other facility defined in 42 USC 1396d(d)
18 or staffing agency is not a state department or agency and if
19 criminal history record information is disclosed on the written
20 report of the criminal history check or the ~~federal bureau of~~
21 ~~investigation~~ **Federal Bureau of Investigation** determination that
22 resulted in a conviction, the department shall notify the
23 psychiatric facility or other facility defined in 42 USC 1396d(d)
24 or staffing agency and the applicant in writing of the type of
25 crime disclosed on the written report of the criminal history check
26 or the ~~federal bureau of investigation~~ **Federal Bureau of**
27 **Investigation** determination without disclosing the details of the
28 crime. Any charges imposed by the department of state police or the
29 ~~federal bureau of investigation~~ **Federal Bureau of Investigation** for



1 conducting a criminal history check or making a determination under
2 this subsection ~~shall~~**must** be paid in the manner required under
3 this subsection. The notice ~~shall~~**must** include a statement that the
4 applicant has a right to appeal the information relied upon by the
5 psychiatric facility or other facility defined in 42 USC 1396d(d)
6 or staffing agency regarding his or her employment eligibility
7 based on the criminal history check. The notice ~~shall~~**must** also
8 include information regarding where to file and describing the
9 appellate procedures established under section 20173b of the public
10 health code, 1978 PA 368, MCL 333.20173b.

11 (5) If a psychiatric facility or other facility defined in 42
12 USC 1396d(d) determines it necessary to employ or grant clinical
13 privileges to an applicant before receiving the results of the
14 applicant's criminal history check or criminal history record
15 information under this section, the psychiatric facility or other
16 facility defined in 42 USC 1396d(d) may conditionally employ or
17 grant conditional clinical privileges to the individual if all of
18 the following apply:

19 (a) The psychiatric facility or other facility defined in 42
20 USC 1396d(d) requests the criminal history check or criminal
21 history record information under this section upon conditionally
22 employing or conditionally granting clinical privileges to the
23 individual.

24 (b) The individual signs a statement in writing that indicates
25 all of the following:

26 (i) That he or she has not been convicted of 1 or more of the
27 crimes that are described in subsection (1)(a) through (g) within
28 the applicable time period prescribed by each subdivision
29 respectively.



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

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

5 (iv) The individual agrees that, if the information in the
6 criminal history check conducted under this section does not
7 confirm the individual's statements under subparagraphs (i) through
8 (iii), his or her employment or clinical privileges will be
9 terminated by the psychiatric facility or other facility defined in
10 42 USC 1396d(d) as required under subsection (1) unless and until
11 the individual appeals and can prove that the information is
12 incorrect.

13 (v) That he or she understands the conditions described in
14 subparagraphs (i) through (iv) that result in the termination of his
15 or her employment or clinical privileges and that those conditions
16 are good cause for termination.

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

1 facility defined in 42 USC 1396d(d) may permit an individual in the
2 facility on a conditional basis under this subsection to have
3 regular direct access to or provide direct services to patients or
4 residents in the psychiatric facility or other facility defined in
5 42 USC 1396d(d) without supervision if all of the following
6 conditions are met:

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

18 (ii) Before the individual has direct access to or provides
19 direct services to patients or residents of the psychiatric
20 facility or other facility defined in 42 USC 1396d(d), the
21 individual signs a statement in writing that he or she has resided
22 in this state without interruption for at least the immediately
23 preceding 12-month period.

24 (iii) If applicable, the individual provides to the department
25 of state police a set of fingerprints on or before the expiration
26 of 10 business days following the date the individual was
27 conditionally employed or granted conditional clinical privileges
28 under this subsection.

29 (6) The department shall develop and distribute a model form



1 for the statements required under subsection (5)(b) and (c). The
2 department shall make the model form available to psychiatric
3 facilities or other facility defined in 42 USC 1396d(d) subject to
4 this section upon request at no charge.

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

12 (8) An individual who knowingly provides false information
13 regarding his or her identity, criminal convictions, or
14 substantiated findings on a statement described in subsection
15 (5)(b)(i) through (iii) is guilty of a misdemeanor punishable by
16 imprisonment for not more than 93 days or a fine of not more than
17 \$500.00, or both.

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



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

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



1 determination of the existence of any national criminal history
2 pertaining to the applicant is not necessary if all of the
3 following requirements are met:

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

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

15 (c) The applicant can provide evidence acceptable to the
16 relevant licensing or regulatory department that he or she has been
17 a resident of this state for the immediately preceding 12-month
18 period.

19 (11) As a condition of continued employment, each employee,
20 independent contractor, or individual granted clinical privileges
21 shall do each of the following:

22 (a) Agree in writing to report to the psychiatric facility or
23 other facility defined in 42 USC 1396d(d) or staffing agency
24 immediately upon being arraigned for 1 or more of the criminal
25 offenses listed in subsection (1)(a) through (g), upon being
26 convicted of 1 or more of the criminal offenses listed in
27 subsection (1)(a) through (g), upon becoming the subject of an
28 order or disposition described under subsection (1)(h), and upon
29 being the subject of a substantiated finding of neglect, abuse, or

1 misappropriation of property as described in subsection (1)(i).
2 Reporting of an arraignment under this subdivision is not cause for
3 termination or denial of employment.

4 (b) If a set of fingerprints is not already on file with the
5 department of state police, provide the department of state police
6 with a set of fingerprints.

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

14 (13) In collaboration with the department of state police, the
15 department of technology, management, and budget shall establish
16 and maintain an automated fingerprint identification system
17 database that would allow the department of state police to store
18 and maintain all fingerprints submitted under this section and
19 would provide for an automatic notification if and when a
20 subsequent criminal arrest fingerprint card submitted into the
21 system matches a set of fingerprints previously submitted under
22 this section. Upon notification, the department of state police
23 shall immediately notify the department and the department shall
24 immediately contact each respective psychiatric facility or other
25 facility defined in 42 USC 1396d(d) or staffing agency with which
26 that individual is associated. Information in the database
27 established under this subsection is confidential, is not subject
28 to disclosure under the freedom of information act, 1976 PA 442,
29 MCL 15.231 to 15.246, and ~~shall~~**must** not be disclosed to any person



1 except for purposes of this act or for law enforcement purposes.

2 (14) The department shall maintain an electronic web-based
3 system to assist psychiatric facilities or other facility defined
4 in 42 USC 1396d(d) and staffing agencies required to check relevant
5 registries and conduct criminal history checks of its employees and
6 independent contractors, and individuals granted privileges and to
7 provide for an automated notice to those psychiatric facilities or
8 other facility defined in 42 USC 1396d(d) and staffing agencies for
9 those individuals inputted in the system who, since the initial
10 criminal history check, have been convicted of a disqualifying
11 offense or have been the subject of a substantiated finding of
12 abuse, neglect, or misappropriation of property. The department may
13 charge a staffing agency a 1-time set-up fee of up to \$100.00 for
14 access to the electronic web-based system under this section.

15 (15) As used in this section:

16 (a) "Adult foster care facility" means an adult foster care
17 facility licensed under the adult foster care facility licensing
18 act, 1979 PA 218, MCL 400.701 to 400.737.

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

20 (i) For a crime that is not a relevant crime, a final
21 conviction, the payment of a fine, a plea of guilty or nolo
22 contendere if accepted by the court, or a finding of guilt for a
23 criminal law violation or a juvenile adjudication or disposition by
24 the juvenile division of probate court or family division of
25 circuit court for a violation that if committed by an adult would
26 be a crime.

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

29 (c) "Covered health facility" means a nursing home, county



1 medical care facility, hospice, hospital that provides swing bed
2 services, or home for the aged licensed under article 17 of the
3 public health code, 1978 PA 368, MCL 333.20101 to 333.22260, or
4 home health agency.

5 (d) "Criminal history check conducted in compliance with this
6 section" includes a criminal history check conducted under this
7 section, under section 20173a of the public health code, 1978 PA
8 ~~3658~~, **368**, MCL 333.20173a, or under section 34b of the adult foster
9 care facility licensing act, 1979 PA 218, MCL 400.734b.

10 (e) "Direct access" means access to a patient or resident or
11 to a patient's or resident's property, financial information,
12 medical records, treatment information, or any other identifying
13 information.

14 (f) "Home health agency" means a person certified by medicare
15 whose business is to provide to individuals in their places of
16 residence other than in a hospital, nursing home, or county medical
17 care facility 1 or more of the following services: nursing
18 services, therapeutic services, social work services, homemaker
19 services, home health aide services, or other related services.

20 (g) "Independent contract" means a contract entered into by a
21 health facility or agency with an individual who provides the
22 contracted services independently or a contract entered into by a
23 health facility or agency with a staffing agency that complies with
24 the requirements of this section to provide the contracted services
25 to the psychiatric facility or other facility defined in 42 USC
26 1396d(d) on behalf of the staffing agency.

27 (h) "Medicare" means benefits under the federal medicare
28 program established under title XVIII of the social security act,
29 42 USC 1395 to 1395kkk-1.



1 (i) "Staffing agency" means an entity that recruits candidates
2 and provides temporary and permanent qualified staffing for
3 psychiatric facilities or other facility defined in 42 USC
4 1396d(d), including independent contractors.

5 (j) "Under the facility's control" means an individual
6 employed by or under independent contract with a psychiatric
7 facility or other facility defined in 42 USC 1396d(d) for whom the
8 psychiatric facility or other facility defined in 42 USC 1396d(d)
9 does both of the following:

10 (i) Determines whether the individual who has access to
11 patients or residents may provide care, treatment, or other similar
12 support service functions to patients or residents served by the
13 psychiatric facility or other facility defined in 42 USC 1396d(d).

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

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

17 (B) The tasks performed by the individual.

18 (C) The individual's work schedule.

19 (D) The supervision or evaluation of the individual's work or
20 job performance, including imposing discipline or granting
21 performance awards.

22 (E) The compensation the individual receives for performing
23 his or her duties.

24 (F) The conditions under which the individual performs his or
25 her duties.

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

28 Enacting section 2. This amendatory act does not take effect
29 unless Senate Bill No.____ or House Bill No.4254 (request no.



1 00483'19) of the 100th Legislature is enacted into law.

