

HOUSE BILL NO. 5213

November 07, 2019, Introduced by Reps. Shannon, Anthony, Cynthia Johnson, Brenda Carter, Gay-Dagnogo, Haadsma, Tyrone Carter, Brixie, Coleman, Garza, Sowerby, Ellison, Howell, Sabo, Yaroch and Lasinski 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



1 provides direct services to patients or residents in the
2 psychiatric facility or other facility defined in 42 USC 1396d(d)
3 if the individual satisfies 1 or more of the following:

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

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

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

21 (ii) A felony involving cruelty or torture.

22 (iii) A felony under chapter XXA of the Michigan penal code,
23 1931 PA 328, MCL 750.145m to 750.145r.

24 (iv) A felony involving criminal sexual conduct.

25 (v) A felony involving abuse or neglect.

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

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



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

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

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

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

23 (iii) A misdemeanor involving criminal sexual conduct.

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

26 (v) A misdemeanor involving abuse or neglect.

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



1 similar to the misdemeanors described in this subdivision, within
2 the 5 years immediately preceding the date of application for
3 employment or clinical privileges or the date of the execution of
4 the independent contract:

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

7 (ii) A misdemeanor involving home invasion.

8 (iii) A misdemeanor involving embezzlement.

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

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

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

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

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

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



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

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

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

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

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

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

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

26 (2) Except as otherwise provided in this subsection or
27 subsection (5), a psychiatric facility or other facility defined in
28 42 USC 1396d(d) shall not employ, independently contract with, or
29 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). This
7 subsection and subsection (1) do not apply to ~~any of the following:~~

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



~~then he or she is no longer exempt and shall be terminated from employment or denied employment or clinical privileges.~~

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

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

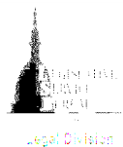
(3) An individual who applies for employment either as an employee or as an independent contractor or for clinical privileges with a psychiatric facility or other facility defined in 42 USC 1396d(d) or a staffing agency and who has not been the subject of a criminal history check conducted in compliance with this section shall give written consent at the time of application for the department of state police to conduct a criminal history check under this section, along with identification acceptable to the department of state police. If the applicant has been the subject of a criminal history check conducted in compliance with this section, the applicant shall give written consent at the time of application for the psychiatric facility or other facility defined in 42 USC 1396d(d) or staffing agency to obtain the criminal history record information as prescribed in subsection (4) from the relevant licensing or regulatory department and for the department of state police to conduct a criminal history check under this



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



(4) Upon receipt of the written consent to conduct a criminal history check and identification required under subsection (3), a psychiatric facility or other facility defined in 42 USC 1396d(d) or staffing agency that has made a good-faith offer of employment or an independent contract or clinical privileges to the applicant shall make a request to the department of state police to conduct a criminal history check on the applicant, to input the applicant's fingerprints into the automated fingerprint identification system database, and to forward the applicant's fingerprints to the ~~federal bureau of investigation.~~ **Federal Bureau of Investigation.** The department of state police shall request the ~~federal bureau of investigation~~ **Federal Bureau of Investigation** to make a determination of the existence of any national criminal history pertaining to the applicant. The applicant shall provide the department of state police with a set of fingerprints. The request shall be made in a manner prescribed by the department of state police. The psychiatric facility or other facility defined in 42 USC 1396d(d) or staffing agency shall make the written consent and identification available to the department of state police. The psychiatric facility or other facility defined in 42 USC 1396d(d) or staffing agency shall make a request regarding that applicant to the relevant licensing or regulatory department to conduct a check of all relevant registries established under federal and state law and regulations for any substantiated findings of abuse, neglect, or misappropriation of property. If the department of state police or the ~~federal bureau of investigation~~ **Federal Bureau of Investigation** charges a fee for conducting the criminal history check, the psychiatric facility or other facility defined in 42 USC 1396d(d) or staffing agency shall pay the cost of the charge. The



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



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

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

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

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

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



1 respectively.

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

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

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

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

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



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

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

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

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



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

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

14 (8) An individual who knowingly provides false information
15 regarding his or her identity, criminal convictions, or
16 substantiated findings on a statement described in subsection
17 (5) (b) (i) ~~through~~ **to** (iii) is guilty of a misdemeanor punishable by
18 imprisonment for not more than 93 days or a fine of not more than
19 \$500.00, or both.

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



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

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



1 licensing or regulatory department under this subsection and a
2 request to the ~~federal bureau of investigation~~ **Federal Bureau of**
3 **Investigation** to make a subsequent determination of the existence
4 of any national criminal history pertaining to the applicant is not
5 necessary if all of the following requirements are met:

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

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

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

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

24 (a) Agree in writing to report to the psychiatric facility or
25 other facility defined in 42 USC 1396d(d) or staffing agency
26 immediately upon being arraigned for 1 or more of the criminal
27 offenses listed in subsection (1)(a) ~~through to~~ (g), upon being
28 convicted of 1 or more of the criminal offenses listed in
29 subsection (1)(a) ~~through to~~ (g), upon becoming the subject of an



1 order or disposition described under subsection (1)(h), and upon
2 being the subject of a substantiated finding of neglect, abuse, or
3 misappropriation of property as described in subsection (1)(i).
4 Reporting of an arraignment under this subdivision is not cause for
5 termination or denial of employment.

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

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

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



1 to disclosure under the freedom of information act, 1976 PA 442,
 2 MCL 15.231 to 15.246, and shall not be disclosed to any person
 3 except for purposes of this act or for law enforcement purposes.

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

17 (15) As used in this section:

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

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

22 (i) For a crime that is not a relevant crime **described under 42**
 23 **USC 1320a-7(a)**, a final conviction, the payment of a fine, a plea
 24 of guilty or nolo contendere if accepted by the court, or a finding
 25 of guilt for a criminal law violation or a juvenile adjudication or
 26 disposition by the juvenile division of probate court or family
 27 division of circuit court for a violation that if committed by an
 28 adult would be a crime.

29 (ii) For a relevant crime described under 42 USC 1320a-7(a),



convicted means that term as defined in 42 USC 1320a-7.

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

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

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

(f) "Home health agency" means ~~a person certified by medicare whose business is to provide to individuals in their places of residence other than in a hospital, nursing home, or county medical care facility 1 or more of the following services: nursing services, therapeutic services, social work services, homemaker services, home health aide services, or other related services.~~ **that term as defined in section 20173a of the public health code, 1978 PA 368, MCL 333.20173a.**

(g) "Independent contract" means a contract entered into by a health facility or agency with an individual who provides the contracted services independently or a contract entered into by a health facility or agency with a staffing agency that complies with the requirements of this section to provide the contracted services to the psychiatric facility or other facility defined in 42 USC



1 1396d(d) on behalf of the staffing agency.

2 ~~(h) "Medicare" means benefits under the federal medicare~~
 3 ~~program established under title XVIII of the social security act,~~
 4 ~~42 USC 1395 to 1395kkk-1.~~

5 (h) ~~(i)~~ "Staffing agency" means an entity that recruits
 6 candidates and provides temporary and permanent qualified staffing
 7 for psychiatric facilities or other facility defined in 42 USC
 8 1396d(d), including independent contractors.

9 (i) ~~(j)~~ "Under the facility's control" means an individual
 10 employed by or under independent contract with a psychiatric
 11 facility or other facility defined in 42 USC 1396d(d) for whom the
 12 psychiatric facility or other facility defined in 42 USC 1396d(d)
 13 does both of the following:

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

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

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

21 (B) The tasks performed by the individual.

22 (C) The individual's work schedule.

23 (D) The supervision or evaluation of the individual's work or
 24 job performance, including imposing discipline or granting
 25 performance awards.

26 (E) The compensation the individual receives for performing
 27 his or her duties.

28 (F) The conditions under which the individual performs his or
 29 her duties.

