

HOUSE BILL NO. 4475

March 09, 2021, Introduced by Reps. Bolden, Anthony, Farrington, Tisdell, Witwer, Camilleri, Brixie, Garza, Manoogian, Steckloff, Stone, Puri, Brenda Carter, Sneller, Aiyash, O'Neal, Kuppa, Yaroach, Ellison, Breen, Neeley, Young, Brabec, Pohutsky, Scott, Whitsett, Liberati, Clemente, Cherry, Wakeman, Kahle, Bezotte, Lightner, Jones, Coleman, Bellino and Wozniak and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 20173a and 21313 (MCL 333.20173a and
333.21313), section 20173a as amended by 2017 PA 167 and section
21313 as amended by 2012 PA 51.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20173a. (1) Except as otherwise provided in subsection
2 (2), a covered facility shall not employ, independently contract
3 with, or grant clinical privileges to an individual who regularly

1 has direct access to or provides direct services to patients or
2 residents in the covered facility if the individual satisfies 1 or
3 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 before 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~~ **750.145s**.

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.

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

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

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

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

(iii) A misdemeanor involving criminal sexual conduct.

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

(v) A misdemeanor involving abuse or neglect.

(e) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 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, 1949 PA 300, MCL
11 257.601d.

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.

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

1 otherwise provided under subdivision (g).

2 (iii) A misdemeanor under part 74 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 if the individual, at the time
12 of conviction, is under the age of 18.

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

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

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

23 (2) Except as otherwise provided in this subsection or
24 subsection (5), a covered facility shall not employ, independently
25 contract with, or grant privileges to an individual who regularly
26 has direct access to or provides direct services to patients or
27 residents in the covered facility until the covered facility or
28 staffing agency has a criminal history check conducted in
29 compliance with this section or has received criminal history

1 record information in compliance with subsections (3) and (10).
2 This subsection and subsection (1) do not apply to any of the
3 following:

4 (a) An individual who is employed by, under independent
5 contract to, or granted clinical privileges in a covered facility
6 before April 1, 2006. On or before April 1, 2011, an individual who
7 is exempt under this subdivision and who has not been the subject
8 of a criminal history check conducted in compliance with this
9 section shall provide the department of state police with a set of
10 fingerprints and the department of state police shall input those
11 fingerprints into the automated fingerprint identification system
12 database established under subsection (13). An individual who is
13 exempt under this subdivision is not limited to working within the
14 covered facility with which he or she is employed by, under
15 independent contract to, or granted clinical privileges on April 1,
16 2006 but may transfer to another covered facility, adult foster
17 care facility, or mental health facility. If an individual who is
18 exempt under this subdivision is subsequently convicted of a crime
19 described under subsection (1)(a) to (g) or found to be the subject
20 of a substantiated finding described under subsection (1)(i) or an
21 order or disposition described under subsection (1)(h), or is found
22 to have been convicted of a relevant crime described under 42 USC
23 1320a-7(a), then he or she is no longer exempt and ~~shall~~**must** be
24 terminated from employment or denied employment or clinical
25 privileges.

26 (b) An individual who is under an independent contract with a
27 covered facility if he or she is not under the facility's control
28 and the services for which he or she is contracted are not directly
29 related to the provision of services to a patient or resident or if

1 the services for which he or she is contracted allow for direct
2 access to the patients or residents but are not performed on an
3 ongoing basis. This exception includes, but is not limited to, an
4 individual who is under an independent contract with the covered
5 facility to provide utility, maintenance, construction, or
6 communications services.

7 (3) An individual who applies for employment either as an
8 employee or as an independent contractor or for clinical privileges
9 with a staffing agency or covered facility and who has not been the
10 subject of a criminal history check conducted in compliance with
11 this section shall give written consent at the time of application
12 for the department of state police to conduct a criminal history
13 check under this section, along with identification acceptable to
14 the department of state police. If the applicant has been the
15 subject of a criminal history check conducted in compliance with
16 this section, the applicant shall give written consent at the time
17 of application for the covered facility or staffing agency to
18 obtain the criminal history record information as prescribed in
19 subsection (4) from the relevant licensing or regulatory department
20 and for the department of state police to conduct a criminal
21 history check under this section if the requirements of subsection
22 (10) are not met and a request to the Federal Bureau of
23 Investigation to make a determination of the existence of any
24 national criminal history pertaining to the applicant is necessary,
25 along with identification acceptable to the department of state
26 police. Upon receipt of the written consent to obtain the criminal
27 history record information and identification required under this
28 subsection, the staffing agency or covered facility that has made a
29 ~~good faith~~ **good-faith** offer of employment or an independent

1 contract or clinical privileges to the applicant shall request the
2 criminal history record information from the relevant licensing or
3 regulatory department and shall make a request regarding that
4 applicant to the relevant licensing or regulatory department to
5 conduct a check of all relevant registries in the manner required
6 in subsection (4). If the requirements of subsection (10) are not
7 met and a request to the Federal Bureau of Investigation to make a
8 subsequent determination of the existence of any national criminal
9 history pertaining to the applicant is necessary, the covered
10 facility or staffing agency shall proceed in the manner required in
11 subsection (4). A staffing agency that employs an individual who
12 regularly has direct access to or provides direct services to
13 patients or residents under an independent contract with a covered
14 facility shall submit information regarding the criminal history
15 check conducted by the staffing agency to the covered facility that
16 has made a ~~good-faith~~**good-faith** offer of independent contract to
17 that applicant.

18 (4) Upon receipt of the written consent to conduct a criminal
19 history check and identification required under subsection (3), a
20 staffing agency or covered facility that has made a ~~good-faith~~
21 **good-faith** offer of employment or an independent contract or
22 clinical privileges to the applicant shall make a request to the
23 department of state police to conduct a criminal history check on
24 the applicant, to input the applicant's fingerprints into the
25 automated fingerprint identification system database, and to
26 forward the applicant's fingerprints to the Federal Bureau of
27 Investigation. The department of state police shall request the
28 Federal Bureau of Investigation to make a determination of the
29 existence of any national criminal history pertaining to the

1 applicant. The applicant shall provide the department of state
2 police with a set of fingerprints. The request ~~shall~~**must** be made
3 in a manner prescribed by the department of state police. The
4 staffing agency or covered facility shall make the written consent
5 and identification available to the department of state police. The
6 staffing agency or covered facility shall make a request regarding
7 that applicant to the relevant licensing or regulatory department
8 to conduct a check of all relevant registries established according
9 to federal and state law and regulations for any substantiated
10 findings of abuse, neglect, or misappropriation of property. If the
11 department of state police or the Federal Bureau of Investigation
12 charges a fee for conducting the criminal history check, the
13 staffing agency or covered facility shall pay the cost of the
14 charge. Except as otherwise provided in this subsection, if the
15 department of state police or the Federal Bureau of Investigation
16 charges a fee for conducting the criminal history check, the
17 department shall pay the cost of or reimburse the charge for a
18 covered facility that is a home for the aged. ~~After October 1,~~
19 ~~2018, if~~**If** the department of state police or the Federal Bureau of
20 Investigation charges a fee for conducting the criminal history
21 check, the department shall pay the cost of the charge up to 40
22 criminal history checks per year for a covered facility that is a
23 home for the aged with fewer than 100 beds and 50 criminal history
24 checks per year for a home for the aged with 100 beds or more. The
25 staffing agency or covered facility shall not seek reimbursement
26 for a charge imposed by the department of state police or the
27 Federal Bureau of Investigation from the individual who is the
28 subject of the criminal history check. A prospective employee or a
29 prospective independent contractor covered under this section may

1 not be charged for the cost of a criminal history check required
2 under this section. The department of state police shall conduct a
3 criminal history check on the applicant named in the request. The
4 department of state police shall provide the department with a
5 written report of the criminal history check conducted under this
6 subsection. The report ~~shall~~**must** contain any criminal history
7 record information on the applicant maintained by the department of
8 state police. The department of state police shall provide the
9 results of the Federal Bureau of Investigation determination to the
10 department within 30 days after the request is made. If the
11 requesting staffing agency or covered facility is not a state
12 department or agency and if criminal history record information is
13 disclosed on the written report of the criminal history check or
14 the Federal Bureau of Investigation determination that resulted in
15 a conviction, the department shall notify the staffing agency or
16 covered facility and the applicant in writing of the type of crime
17 disclosed on the written report of the criminal history check or
18 the Federal Bureau of Investigation determination without
19 disclosing the details of the crime. Any charges imposed by the
20 department of state police or the Federal Bureau of Investigation
21 for conducting a criminal history check or making a determination
22 under this subsection ~~shall~~**must** be paid in the manner required
23 under this subsection. The notice ~~shall~~**must** include a statement
24 that the applicant has a right to appeal the information relied
25 upon by the staffing agency or covered facility in making its
26 decision regarding his or her employment eligibility based on the
27 criminal history check. The notice ~~shall~~**must** also include
28 information regarding where to file and describing the appellate
29 procedures established under section 20173b.

1 (5) If a covered facility determines it necessary to employ or
2 grant clinical privileges to an applicant before receiving the
3 results of the applicant's criminal history check or criminal
4 history record information under this section, the covered facility
5 may conditionally employ or grant conditional clinical privileges
6 to the individual if all of the following apply:

7 (a) The covered facility requests the criminal history check
8 or criminal history record information under this section upon
9 conditionally employing or conditionally granting clinical
10 privileges to the individual.

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

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

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

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

20 (iv) That he or she agrees that, if the information in the
21 criminal history check conducted under this section does not
22 confirm the individual's statements under subparagraphs (i) to (iii),
23 his or her employment or clinical privileges will be terminated by
24 the covered facility as required under subsection (1) unless and
25 until the individual appeals and can prove that the information is
26 incorrect.

27 (v) That he or she understands that the conditions described
28 in subparagraphs (i) to (iv) may result in the termination of his or
29 her employment or clinical privileges and that those conditions are

1 good cause for termination.

2 (c) Except as otherwise provided in this subdivision, the
3 covered facility does not permit the individual to have regular
4 direct access to or provide direct services to patients or
5 residents in the covered facility without supervision until the
6 criminal history check or criminal history record information is
7 obtained and the individual is eligible for that employment or
8 clinical privileges. If required under this subdivision, the
9 covered facility shall provide on-site supervision of an individual
10 in the covered facility on a conditional basis under this
11 subsection by an individual who has undergone a criminal history
12 check conducted in compliance with this section. A covered facility
13 may permit an individual in the covered facility on a conditional
14 basis under this subsection to have regular direct access to or
15 provide direct services to patients or residents in the covered
16 facility without supervision if all of the following conditions are
17 met:

18 (i) The covered facility, at its own expense and before the
19 individual has direct access to or provides direct services to
20 patients or residents of the covered facility, conducts a search of
21 public records on that individual through the internet criminal
22 history access tool maintained by the department of state police
23 and the results of that search do not uncover any information that
24 would indicate that the individual is not eligible to have regular
25 direct access to or provide direct services to patients or
26 residents under this section.

27 (ii) Before the individual has direct access to or provides
28 direct services to patients or residents of the covered facility,
29 the individual signs a statement in writing that he or she has

1 resided in this state without interruption for at least the
2 immediately preceding 12-month period.

3 (iii) If applicable, the individual provides to the department
4 of state police a set of fingerprints on or before the expiration
5 of 10 business days following the date the individual was
6 conditionally employed or granted conditional clinical privileges
7 under this subsection.

8 (6) The department shall develop and distribute a model form
9 for the statements required under subsection (5) (b) and (c). The
10 department shall make the model form available to covered
11 facilities upon request at no charge.

12 (7) If an individual is employed as a conditional employee or
13 is granted conditional clinical privileges under subsection (5),
14 and the information under subsection (3) or report under subsection
15 (4) does not confirm the individual's statement under subsection
16 (5) (b) (i) to (iii), the covered facility shall terminate the
17 individual's employment or clinical privileges as required by
18 subsection (1).

19 (8) An individual who knowingly provides false information
20 regarding his or her identity, criminal convictions, or
21 substantiated findings on a statement described in subsection
22 (5) (b) (i) to (iii) is guilty of a misdemeanor punishable by
23 imprisonment for not more than 93 days or a fine of not more than
24 \$500.00, or both.

25 (9) A staffing agency or covered facility shall use criminal
26 history record information obtained under subsection (3) or (4)
27 only for the purpose of evaluating an applicant's qualifications
28 for employment, an independent contract, or clinical privileges in
29 the position for which he or she has applied and for the purposes

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

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

1 criminal history record information provided by the relevant
2 licensing or regulatory department under this subsection and a
3 request to the Federal Bureau of Investigation to make a subsequent
4 determination of the existence of any national criminal history
5 pertaining to the applicant is not necessary if all of the
6 following requirements are 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 the
10 staffing agency or a covered facility, adult foster care facility,
11 or mental health facility since the criminal history check was
12 conducted in compliance with this section or meets the continuous
13 employment requirement of this subdivision other than being on
14 layoff status for less than 1 year from a covered facility, adult
15 foster care facility, or mental health facility.

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

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

23 (a) Agree in writing to report to the staffing agency or
24 covered facility immediately upon being arraigned for 1 or more of
25 the criminal offenses listed in subsection (1)(a) to (g), upon
26 being convicted of 1 or more of the criminal offenses listed in
27 subsection (1)(a) to (g), upon becoming the subject of an order or
28 disposition described under subsection (1)(h), and upon being the
29 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 section 20165, a
8 licensee, owner, administrator, or operator of a staffing agency or
9 covered facility who knowingly and willfully fails to conduct the
10 criminal history checks as required under this section is guilty of
11 a misdemeanor punishable by imprisonment for not more than 1 year
12 or a fine of not more than \$5,000.00, or both.

13 (13) The department of state police and the Federal Bureau of
14 Investigation shall store and retain all fingerprints submitted
15 under this section and provide for an automatic notification if and
16 when subsequent criminal information submitted into the system
17 matches a set of fingerprints previously submitted under this
18 section. Upon such notification, the department of state police
19 shall immediately notify the department and the department shall
20 immediately contact each respective staffing agency or covered
21 facility with which that individual is associated. Information in
22 the database established under this subsection is confidential, is
23 not subject to disclosure under the freedom of information act,
24 1976 PA 442, MCL 15.231 to 15.246, and ~~shall~~**must** not be disclosed
25 to any person except for purposes of this act or for law
26 enforcement purposes.

27 (14) The department shall maintain an electronic web-based
28 system to assist staffing agencies and covered facilities required
29 to check relevant registries and conduct criminal history checks of

1 its employees, independent contractors, and individuals granted
2 privileges and to provide for an automated notice to those staffing
3 agencies and covered facilities for those individuals inputted in
4 the system who, since the initial criminal history check, have been
5 convicted of a disqualifying offense or have been the subject of a
6 substantiated finding of abuse, neglect, or misappropriation of
7 property. The department may charge a staffing agency a 1-time set-
8 up fee of up to \$100.00 for access to the electronic web-based
9 system under this section.

10 (15) As used in this section:

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

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

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

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

24 (c) "Covered facility" means a health facility or agency that
25 is a nursing home, county medical care facility, hospice, hospital
26 that provides swing bed services, home for the aged, or home health
27 agency.

28 (d) "Criminal history check conducted in compliance with this
29 section" includes a criminal history check conducted under this

1 section, under section 134a of the mental health code, 1974 PA 258,
2 MCL 330.1134a, or under section 34b of the adult foster care
3 facility licensing act, 1979 PA 218, MCL 400.734b.

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

8 (f) "Home health agency" means a person certified by Medicare
9 whose business is to provide to individuals in their places of
10 residence other than in a hospital, nursing home, or county medical
11 care facility 1 or more of the following services: nursing
12 services, therapeutic services, social work services, homemaker
13 services, home health aide services, or other related services.

14 (g) "Independent contract" means a contract entered into by a
15 covered facility with an individual who provides the contracted
16 services independently or a contract entered into by a covered
17 facility with a staffing agency that complies with the requirements
18 of this section to provide the contracted services to the covered
19 facility on behalf of the staffing agency.

20 (h) "Medicare" means benefits under the federal Medicare
21 program established under title XVIII of the social security act,
22 42 USC 1395 to 1395III.

23 (i) "Mental health facility" means a psychiatric facility or
24 other facility defined in 42 USC 1396d(d) as described under the
25 mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

26 (j) "Staffing agency" means an entity that recruits candidates
27 and provides temporary and permanent qualified staffing for covered
28 facilities, including independent contractors.

29 (k) "Under the facility's control" means an individual

1 employed by or under independent contract with a covered facility
2 for whom the covered facility does both of the following:

3 (i) Determines whether the individual who has access to
4 patients or residents may provide care, treatment, or other similar
5 support service functions to patients or residents served by the
6 covered facility.

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

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

10 (B) The tasks performed by the individual.

11 (C) The individual's work schedule.

12 (D) The supervision or evaluation of the individual's work or
13 job performance, including imposing discipline or granting
14 performance awards.

15 (E) The compensation the individual receives for performing
16 his or her duties.

17 (F) The conditions under which the individual performs his or
18 her duties.

19 Sec. 21313. (1) The owner, operator, and governing body of a
20 home for the aged are responsible for all phases of the operation
21 of the home and shall assure that the home maintains an organized
22 program to provide room and board, protection, supervision,
23 assistance, and supervised personal care for its residents.

24 (2) The owner, operator, and governing body shall assure the
25 availability of emergency medical care required by a resident.

26 (3) The owner, operator, or member of the governing body of a
27 home for the aged and the authorized representative ~~shall~~**must** be
28 of good moral character.

29 (4) The department of **health and** human services shall not

1 issue a license to or renew the license of an owner, operator, or
 2 member of the governing body, who has regular direct access to
 3 residents or who has on-site facility operational responsibilities,
 4 or an applicant, if an individual or the authorized representative,
 5 if any of those individuals have been convicted of 1 or more of the
 6 following:

7 (a) A felony under this act or under chapter XXA of the
 8 Michigan penal code, 1931 PA 328, MCL 750.145m to ~~750.145r.~~

9 **750.145s.**

10 (b) A misdemeanor under this act or under chapter XXA of the
 11 Michigan penal code, 1931 PA 328, MCL 750.145m to ~~750.145r,~~
 12 **750.145s,** within the 10 years immediately preceding the
 13 application.

14 (c) A misdemeanor involving abuse, neglect, assault, battery,
 15 or criminal sexual conduct or involving fraud or theft against a
 16 vulnerable adult as that term is defined in section 145m of the
 17 Michigan penal code, 1931 PA 328, MCL 750.145m, or a state or
 18 federal crime that is substantially similar to a misdemeanor
 19 described in this subdivision within the 10 years immediately
 20 preceding the application.

21 (5) The applicant for a license for a home for the aged, if an
 22 individual, shall give written consent at the time of license
 23 application and the authorized representative shall give written
 24 consent at the time of appointment, for the department of state
 25 police to conduct both of the following:

26 (a) A criminal history check.

27 (b) A criminal records check through the ~~federal bureau of~~
 28 ~~investigation.~~ **Federal Bureau of Investigation.**

29 (6) Unless already submitted under subsection (5), an owner,

1 operator, or member of the governing body who has regular direct
2 access to residents or who has on-site facility operational
3 responsibilities for a home for the aged shall give written consent
4 at the time of license application for the department of state
5 police to conduct both of the following:

6 (a) A criminal history check.

7 (b) A criminal records check through the ~~federal bureau of~~
8 ~~investigation.~~ **Federal Bureau of Investigation.**

9 (7) The department of **health and** human services shall require
10 the applicant, authorized representative, owner, operator, or
11 member of the governing body who has regular direct access to
12 residents or who has on-site facility operational responsibilities
13 to submit his or her fingerprints to the department of state police
14 for the criminal history check and criminal records check described
15 in subsections (5) and (6).

16 (8) ~~Not later than 1 year after the effective date of the 2012~~
17 ~~amendatory act that amended this subsection, all~~ **All** owners,
18 operators, and members of the governing body of homes for the aged
19 who have regular direct access to residents or who have on-site
20 facility operational responsibilities and all authorized
21 representatives shall comply with the requirements of this section.

22 (9) The department of **health and** human services shall request
23 a criminal history check and criminal records check in the manner
24 prescribed by the department of state police. The department of
25 state police shall conduct the criminal history check and provide a
26 report of the results to the licensing or regulatory bureau of the
27 department of **health and** human services. The report ~~shall~~ **must**
28 contain any criminal history information on the person maintained
29 by the department of state police and the results of the criminal

1 records check from the ~~federal bureau of investigation.~~ **Federal**
2 **Bureau of Investigation.** The department of state police may charge
3 the person on whom the criminal history check and criminal records
4 check are performed under this section a fee for the checks
5 required under this section that does not exceed the actual cost
6 and reasonable cost of conducting the checks.

7 (10) ~~Beginning the effective date of the 2012 amendatory act~~
8 ~~that added this subsection, if~~ **If** an applicant, authorized
9 representative, owner, operator, or member of the governing body
10 who has regular direct access to residents or who has on-site
11 facility operational responsibilities applies for a license or to
12 renew a license to operate a home for the aged and previously
13 underwent a criminal history check and criminal records check
14 required under subsection (5) or (6) or under section 134a of the
15 mental health code, 1974 PA 258, MCL 330.1134a, and has remained
16 continuously licensed or continuously employed under section 20173a
17 or under section 34b of the adult foster care facility licensing
18 act, 1979 PA 218, MCL 400.734b, after the criminal history check
19 and criminal records check have been performed, the applicant,
20 authorized representative, owner, operator, or member of the
21 governing body who has regular direct access to residents or who
22 has on-site facility operational responsibilities is not required
23 to submit to another criminal history check or criminal records
24 check upon renewal of the license obtained under this section.

25 (11) The department of state police shall store and maintain
26 all fingerprints submitted under this act in an automated
27 fingerprint identification system database that provides for an
28 automatic notification at the time a subsequent criminal arrest
29 fingerprint card submitted into the system matches a set of

1 fingerprints previously submitted in accordance with this act. At
2 the time of that notification, the department of state police shall
3 immediately notify the department of **health and** human services. The
4 department of **health and** human services shall take the appropriate
5 action upon notification by the department of state police under
6 this subsection.

7 (12) An applicant, owner, operator, member of a governing
8 body, or authorized representative of a home for the aged shall not
9 be present in a home for the aged if he or she has been convicted
10 of either of the following:

11 (a) Vulnerable adult abuse, neglect, or financial
12 exploitation.

13 (b) A listed offense as defined in section 2 of the sex
14 offenders registration act, 1994 PA 295, MCL 28.722.

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

17 Enacting section 2. This amendatory act does not take effect
18 unless Senate Bill No. ____ or House Bill No. 4473 (request no.
19 01188'21) of the 101st Legislature is enacted into law.