

HOUSE BILL NO. 5521

February 20, 2020, Introduced by Rep. Reilly and referred to the Committee on Health Policy.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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



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~~ **before** 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.

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~~ **before** the date
6 of 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.

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~~ to (g) or found to be the subject of a substantiated
 26 finding described under subsection (1) (i) or an order or
 27 disposition described under subsection (1) (h), or is found to have
 28 been convicted of a relevant crime described under subsection
 29 (1) (a), then he or she is no longer exempt and ~~shall~~ **must** be



1 terminated from employment or denied employment or clinical
2 privileges.

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

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



1 (4) ~~Upon~~**On** receipt of the written consent to conduct a
2 criminal history check and identification required under subsection
3 (3), a psychiatric facility or other facility defined in 42 USC
4 1396d(d) or staffing agency that has made a good-faith offer of
5 employment or an independent contract or clinical privileges to the
6 applicant shall make a request to the department of state police to
7 conduct a criminal history check on the applicant, to input the
8 applicant's fingerprints into the automated fingerprint
9 identification system database, and to forward the applicant's
10 fingerprints to the ~~federal bureau of investigation~~. **Federal Bureau**
11 **of Investigation**. The department of state police shall request the
12 ~~federal bureau of investigation~~ **Federal Bureau of Investigation** to
13 make a determination of the existence of any national criminal
14 history pertaining to the applicant. The applicant shall provide
15 the department of state police with a set of fingerprints. The
16 request ~~shall~~**must** be made in a manner prescribed by the department
17 of state police. The psychiatric facility or other facility defined
18 in 42 USC 1396d(d) or staffing agency shall make the written
19 consent and identification available to the department of state
20 police. The psychiatric facility or other facility defined in 42
21 USC 1396d(d) or staffing agency shall make a request regarding that
22 applicant to the relevant licensing or regulatory department to
23 conduct a check of all relevant registries established under
24 federal and state law and regulations for any substantiated
25 findings of abuse, neglect, or misappropriation of property. If the
26 department of state police or the ~~federal bureau of investigation~~
27 **Federal Bureau of Investigation** charges a fee for conducting the
28 criminal history check, the psychiatric facility or other facility
29 defined in 42 USC 1396d(d) or staffing agency shall pay the cost of



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



1 the ~~federal bureau of investigation~~ **Federal Bureau of Investigation**
2 for conducting a criminal history check or making a determination
3 under this subsection ~~shall~~ **must** be paid in the manner required
4 under this subsection. The notice ~~shall~~ **must** include a statement
5 that the applicant has a right to appeal the information relied
6 upon by the psychiatric facility or other facility defined in 42
7 USC 1396d(d) or staffing agency regarding his or her employment
8 eligibility based on the criminal history check. The notice ~~shall~~
9 **must** also include information regarding where to file and
10 describing the appellate procedures established under section
11 20173b of the public health code, 1978 PA 368, MCL 333.20173b.

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

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

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

27 (i) That he or she has not been convicted of 1 or more of the
28 crimes that are described in subsection (1)(a) ~~through~~ **to** (g)
29 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 that
16 the individual is not eligible to have regular direct access to or
17 provide direct services to patients or residents under this
18 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~~ **On** consent of an applicant as required in subsection
 15 (3) and ~~upon~~ **on** request from a psychiatric facility or other
 16 facility defined in 42 USC 1396d(d) or staffing agency that has
 17 made a good-faith offer of employment or an independent contract or
 18 clinical privileges to the applicant, the relevant licensing or
 19 regulatory department shall review the criminal history record
 20 information, if any, and notify the requesting psychiatric facility
 21 or other facility defined in 42 USC 1396d(d) or staffing agency of
 22 the information in the manner prescribed in subsection (4). Until
 23 the ~~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~~ **On** 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~~**must** 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, a final
23 conviction, the payment of a fine, a plea of guilty or nolo
24 contendere if accepted by the court, or a finding of guilt for a
25 criminal law violation or a juvenile adjudication or disposition by
26 the juvenile division of probate court or family division of
27 circuit court for a violation that if committed by an adult would
28 be a crime.

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



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

2 (c) "Covered health facility" means a nursing home, county
3 medical care facility, hospice, hospital that provides swing bed
4 services, or home for the aged licensed under article 17 of the
5 public health code, 1978 PA 368, MCL 333.20101 to ~~333.22260,~~
6 **333.21925**, or home health agency.

7 (d) "Criminal history check conducted in compliance with this
8 section" includes a criminal history check conducted under this
9 section, under section 20173a of the public health code, 1978 PA
10 ~~3658,~~ **368**, MCL 333.20173a, or under section 34b of the adult foster
11 care facility licensing act, 1979 PA 218, MCL 400.734b.

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

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

23 (g) "Independent contract" means a contract entered into by a
24 health facility or agency with an individual who provides the
25 contracted services independently or a contract entered into by a
26 health facility or agency with a staffing agency that complies with
27 the requirements of this section to provide the contracted services
28 to the psychiatric facility or other facility defined in 42 USC
29 1396d(d) on behalf of the staffing agency.



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

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

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

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

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

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

20 (B) The tasks performed by the individual.

21 (C) The individual's work schedule.

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

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

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

29 Enacting section 1. This amendatory act takes effect 90 days



1 after the date it is enacted into law.

2 Enacting section 2. This amendatory act does not take effect
3 unless Senate Bill No. _____ or House Bill No. 5510 (request no.
4 04667'19) of the 100th Legislature is enacted into law.

