

# HOUSE BILL NO. 5526

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

A bill to amend 1979 PA 218, entitled "Adult foster care facility licensing act," by amending sections 5 and 34b (MCL 400.705 and 400.734b), section 5 as amended by 2018 PA 557 and section 34b as amended by 2018 PA 558.

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

- 1           Sec. 5. (1) "Good moral character" means good moral character
- 2 as defined in 1974 PA 381, MCL 338.41 to 338.47.
- 3           (2) "Licensed hospice program" means a health care program



1 that provides a coordinated set of services rendered at home or in  
2 an outpatient or institutional setting for individuals suffering  
3 from a disease or condition with a terminal prognosis and that is  
4 licensed under article 17 of the public health code, 1978 PA 368,  
5 MCL 333.20101 to ~~333.22260~~. **333.21925**.

6 (3) "Licensee" means the agency, association, corporation,  
7 organization, person, or department or agency of the state, county,  
8 city, or other political subdivision, that has been issued a  
9 license to operate an adult foster care facility.

10 (4) "Licensee designee" means the individual designated in  
11 writing by the owner or person with legal authority to act on  
12 behalf of the company or organization on licensing matters. The  
13 licensee designee must meet the licensee qualification requirements  
14 of this act and rules promulgated under this act. The licensee  
15 designee who is not an owner, partner, or director of the applicant  
16 shall not sign the original license application or amendments to  
17 the application.

18 (5) "Mental illness" means a substantial disorder of thought  
19 or mood that significantly impairs judgment, behavior, capacity to  
20 recognize reality, or ability to cope with the ordinary demands of  
21 life.

22 (6) "New construction" means a newly constructed facility or a  
23 facility that has been completely renovated for use as an adult  
24 foster care facility.

25 Sec. 34b. (1) In addition to the restrictions prescribed in  
26 sections 13, 22, and 31, and except as otherwise provided in  
27 subsection (2), an adult foster care facility shall not employ or  
28 independently contract with an individual who regularly has direct  
29 access to or provides direct services to residents of the adult



1 foster care facility if the individual satisfies 1 or more of the  
2 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 before the date of application for employment or the date of the  
13 execution of the independent contract:

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

19 (ii) A felony involving cruelty or torture.

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

22 (iv) A felony involving criminal sexual conduct.

23 (v) A felony involving abuse or neglect.

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

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

28 (c) Has been convicted of a felony or an attempt or conspiracy  
29 to commit a felony, other than a felony for a relevant crime



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

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

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

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

21 (iii) A misdemeanor involving criminal sexual conduct.

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

24 (v) A misdemeanor involving abuse or neglect.

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



1 employment or the date of the execution of the independent  
2 contract:

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

5 (ii) A misdemeanor involving home invasion.

6 (iii) A misdemeanor involving embezzlement.

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

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

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

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

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

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

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



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

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

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

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

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

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

24 (2) Except as otherwise provided in this subsection or  
25 subsection (6), an adult foster care facility shall not employ or  
26 independently contract with an individual who has direct access to  
27 residents until the adult foster care facility or staffing agency  
28 has conducted a criminal history check in compliance with this  
29 section or has received criminal history record information in



1 compliance with subsections (3) and (11). This subsection and  
2 subsection (1) do not apply to an individual who is employed by or  
3 under contract to an adult foster care facility before April 1,  
4 2006. On or before April 1, 2011, an individual who is exempt under  
5 this subsection and who has not been the subject of a criminal  
6 history check conducted in compliance with this section shall  
7 provide the department of state police a set of fingerprints and  
8 the department of state police shall input those fingerprints into  
9 the automated fingerprint identification system database  
10 established under subsection (14). An individual who is exempt  
11 under this subsection is not limited to working within the adult  
12 foster care facility with which he or she is employed by or under  
13 independent contract with on April 1, 2006 but may transfer to  
14 another adult foster care facility, mental health facility, or  
15 covered health facility. If an individual who is exempt under this  
16 subsection is subsequently convicted of a crime or offense  
17 described under subsection (1)(a) to (g) or found to be the subject  
18 of a substantiated finding described under subsection (1)(i) or an  
19 order or disposition described under subsection (1)(h), or is found  
20 to have been convicted of a relevant crime described under 42 USC  
21 1320a-7(a), he or she is no longer exempt and shall be terminated  
22 from employment or denied employment.

23 (3) An individual who applies for employment either as an  
24 employee or as an independent contractor with an adult foster care  
25 facility or staffing agency and who has not been the subject of a  
26 criminal history check conducted in compliance with this section  
27 shall give written consent at the time of application for the  
28 department of state police to conduct a criminal history check  
29 under this section, along with identification acceptable to the



1 department of state police. If the individual has been the subject  
2 of a criminal history check conducted in compliance with this  
3 section, the individual shall give written consent at the time of  
4 application for the adult foster care facility or staffing agency  
5 to obtain the criminal history record information as prescribed in  
6 subsection (4) or (5) from the relevant licensing or regulatory  
7 department and for the department of state police to conduct a  
8 criminal history check under this section if the requirements of  
9 subsection (11) are not met and a request to the Federal Bureau of  
10 Investigation to make a determination of the existence of any  
11 national criminal history pertaining to the individual is  
12 necessary, along with identification acceptable to the department  
13 of state police. ~~Upon~~**On** receipt of the written consent to obtain  
14 the criminal history record information and identification required  
15 under this subsection, the adult foster care facility or staffing  
16 agency that has made a good-faith offer of employment or an  
17 independent contract to the individual shall request the criminal  
18 history record information from the relevant licensing or  
19 regulatory department and shall make a request regarding that  
20 individual to the relevant licensing or regulatory department to  
21 conduct a check of all relevant registries in the manner required  
22 in subsection (4). If the requirements of subsection (11) are not  
23 met and a request to the Federal Bureau of Investigation to make a  
24 subsequent determination of the existence of any national criminal  
25 history pertaining to the individual is necessary, the adult foster  
26 care facility or staffing agency shall proceed in the manner  
27 required in subsection (5). A staffing agency that employs an  
28 individual who regularly has direct access to or provides direct  
29 services to residents under an independent contract with an adult





1 foster care facility shall submit information regarding the  
2 criminal history check conducted by the staffing agency to the  
3 adult foster care facility that has made a good-faith offer of  
4 independent contract to that applicant.

5 (4) ~~Upon~~**On** receipt of the written consent to conduct a  
6 criminal history check and identification required under subsection  
7 (3), the adult foster care facility or staffing agency that has  
8 made a good-faith offer of employment or independent contract to  
9 the individual shall make a request to the department of state  
10 police to conduct a criminal history check on the individual and  
11 input the individual's fingerprints into the automated fingerprint  
12 identification system database, and shall make a request to the  
13 relevant licensing or regulatory department to perform a check of  
14 all relevant registries established according to federal and state  
15 law and regulations for any substantiated findings of abuse,  
16 neglect, or misappropriation of property. The request ~~shall~~**must** be  
17 made in a manner prescribed by the department of state police and  
18 the relevant licensing or regulatory department or agency. The  
19 adult foster care facility or staffing agency shall make the  
20 written consent and identification available to the department of  
21 state police and the relevant licensing or regulatory department or  
22 agency. Until June 30, 2020, if the department of state police or  
23 the Federal Bureau of Investigation charges a fee for conducting  
24 the criminal history check, the charge shall be paid by or  
25 reimbursed by the department. Until June 30, 2020, the adult foster  
26 care facility or staffing agency shall not seek reimbursement for a  
27 charge imposed by the department of state police or the ~~federal~~  
28 ~~bureau of investigation~~**Federal Bureau of Investigation** from the  
29 individual who is the subject of the criminal history check.



1 Beginning July 1, 2020, if the department of state police or the  
2 Federal Bureau of Investigation charges a fee for conducting the  
3 criminal history check, the charge shall be paid by the adult  
4 foster care facility, the staffing agency, or the individual. The  
5 department of state police shall conduct a criminal history check  
6 on the individual named in the request. The department of state  
7 police shall provide the department with a written report of the  
8 criminal history check conducted under this subsection. The report  
9 ~~shall~~**must** contain any criminal history record information on the  
10 individual maintained by the department of state police.

11 (5) ~~Upon~~**On** receipt of the written consent to conduct a  
12 criminal history check and identification required under subsection  
13 (3), if the individual has applied for employment either as an  
14 employee or as an independent contractor with an adult foster care  
15 facility or staffing agency, the adult foster care facility or  
16 staffing agency that has made a good-faith offer of employment or  
17 independent contract shall comply with subsection (4) and shall  
18 make a request to the department of state police to forward the  
19 individual's fingerprints to the Federal Bureau of Investigation.  
20 The department of state police shall request the Federal Bureau of  
21 Investigation to make a determination of the existence of any  
22 national criminal history pertaining to the individual. An  
23 individual described in this subsection shall provide the  
24 department of state police with a set of fingerprints. The  
25 department of state police shall complete the criminal history  
26 check under subsection (4) and, except as otherwise provided in  
27 this subsection, provide the results of its determination under  
28 subsection (4) and the results of the Federal Bureau of  
29 Investigation determination to the department within 30 days after



1 the request is made. If the requesting adult foster care facility  
2 or staffing agency is not a state department or agency and if  
3 criminal history record information is disclosed on the written  
4 report of the criminal history check or the Federal Bureau of  
5 Investigation determination that resulted in a conviction, the  
6 department shall notify the adult foster care facility or staffing  
7 agency and the individual in writing of the type of crime disclosed  
8 on the written report of the criminal history check or the Federal  
9 Bureau of Investigation determination without disclosing the  
10 details of the crime. The notification ~~shall~~**must** inform the adult  
11 foster care facility or staffing agency and the applicant regarding  
12 the appeal process in section 34c and ~~shall~~**must** include a  
13 statement that the individual has a right to appeal the information  
14 relied upon by the adult foster care facility or staffing agency in  
15 making its decision regarding his or her employment eligibility  
16 based on the criminal history check. Any charges imposed by the  
17 department of state police or the Federal Bureau of Investigation  
18 for conducting a criminal history check or making a determination  
19 under this subsection ~~shall~~**must** be paid in the manner required  
20 under subsection (4).

21 (6) If an adult foster care facility determines it necessary  
22 to employ or independently contract with an individual before  
23 receiving the results of the individual's criminal history check or  
24 criminal history record information required under this section,  
25 the adult foster care facility may conditionally employ the  
26 individual if all of the following apply:

27 (a) The adult foster care facility requests the criminal  
28 history check or criminal history record information required under  
29 this section, ~~upon~~**on** conditionally employing the individual.



1 (b) The individual signs a written statement indicating all of  
2 the following:

3 (i) That he or she has not been convicted of 1 or more of the  
4 crimes that are described in subsection (1)(a) to (g) within the  
5 applicable time period prescribed by subsection (1)(a) to (g).

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

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

10 (iv) The individual agrees that, if the information in the  
11 criminal history check conducted under this section does not  
12 confirm the individual's statement under subparagraphs (i) to (iii),  
13 his or her employment will be terminated by the adult foster care  
14 facility as required under subsection (1) unless and until the  
15 individual can prove that the information is incorrect.

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

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



1 this section. An adult foster care facility may permit an  
 2 individual in the facility on a conditional basis under this  
 3 subsection to have regular direct access to or provide direct  
 4 services to residents in the adult foster care facility without  
 5 supervision if all of the following conditions are met:

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

15 (ii) Before the individual has direct access to or provides  
 16 direct services to residents of the adult foster care facility, the  
 17 individual signs a statement in writing that he or she has resided  
 18 in this state without interruption for at least the immediately  
 19 preceding 12-month period.

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

24 (7) The department shall develop and distribute the model form  
 25 for the statements required under subsection (6) (b) and (c). The  
 26 department shall make the model form available to adult foster care  
 27 facilities ~~upon~~**on** request at no charge.

28 (8) If an individual is conditionally employed under  
 29 subsection (6), and the information under subsection (3) or report



1 under subsection (4) or (5), if applicable, does not confirm the  
2 individual's statement under subsection (6)(b)(i) to (iii), the adult  
3 foster care facility shall terminate the individual's employment as  
4 required by subsection (1).

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

11 (10) An adult foster care facility or staffing agency shall  
12 use criminal history record information obtained under subsection  
13 (3), (4), or (5) only for the purpose of evaluating an individual's  
14 qualifications for employment in the position for which he or she  
15 has applied and for the purposes of subsections (6) and (8). An  
16 adult foster care facility or staffing agency or an employee of the  
17 adult foster care facility or staffing agency shall not disclose  
18 criminal history record information obtained under this section to  
19 a person who is not directly involved in evaluating the  
20 individual's qualifications for employment or independent contract.  
21 An individual who knowingly uses or disseminates the criminal  
22 history record information obtained under subsection (3), (4), or  
23 (5) in violation of this subsection is guilty of a misdemeanor  
24 punishable by imprisonment for not more than 93 days or a fine of  
25 not more than \$1,000.00, or both. Except for a knowing or  
26 intentional release of false information, an adult foster care  
27 facility or staffing agency has no liability in connection with a  
28 criminal history check conducted in compliance with this section or  
29 the release of criminal history record information under this



1 subsection.

2 (11) ~~Upon~~**On** consent of an individual as required in  
 3 subsection (3) and ~~upon~~**on** request from an adult foster care  
 4 facility or staffing agency that has made a good-faith offer of  
 5 employment or an independent contract to the individual, the  
 6 relevant licensing or regulatory department shall review the  
 7 criminal history record information, if any, and notify the  
 8 requesting adult foster care facility or staffing agency of the  
 9 information in the manner prescribed in subsection (4) or (5).  
 10 Until the Federal Bureau of Investigation implements an automatic  
 11 notification system similar to the system required of the state  
 12 police under subsection (14) and federal regulations allow the  
 13 federal criminal record to be used for subsequent authorized uses,  
 14 as determined in an order issued by the department, an adult foster  
 15 care facility or staffing agency may rely on the criminal history  
 16 record information provided by the relevant licensing or regulatory  
 17 department under this subsection and a request to the Federal  
 18 Bureau of Investigation to make a subsequent determination of the  
 19 existence of any national criminal history pertaining to the  
 20 individual is not necessary if all of the following requirements  
 21 are met:

22 (a) The criminal history check was conducted during the  
 23 immediately preceding 24-month period.

24 (b) The individual has been continuously employed by an adult  
 25 foster care facility, mental health facility, or covered health  
 26 facility, or the staffing agency since the criminal history check  
 27 was conducted in compliance with this section or meets the  
 28 continuous employment requirement of this subdivision other than  
 29 being on layoff status for less than 1 year from an adult foster



1 care facility, mental health facility, or covered health facility.

2 (c) The individual can provide evidence acceptable to the  
3 relevant licensing or regulatory department that he or she has been  
4 a resident of this state for the immediately preceding 12-month  
5 period.

6 (12) As a condition of continued employment, each employee or  
7 independent contractor shall do both of the following:

8 (a) Agree in writing to report to the adult foster care  
9 facility or staffing agency immediately upon being arraigned on 1  
10 or more of the criminal offenses listed in subsection (1)(a) to  
11 (g), upon being convicted of 1 or more of the criminal offenses  
12 listed in subsection (1)(a) to (g), upon becoming the subject of an  
13 order or disposition described under subsection (1)(h), and upon  
14 becoming the subject of a substantiated finding described under  
15 subsection (1)(i). Reporting of an arraignment under this  
16 subdivision is not cause for termination or denial of employment.

17 (b) If a set of fingerprints is not already on file with the  
18 department of state police, provide the department of state police  
19 with a set of fingerprints.

20 (13) In addition to sanctions set forth in this act, a  
21 licensee, owner, administrator, or operator of an adult foster care  
22 facility or staffing agency who knowingly and willfully fails to  
23 conduct the criminal history checks as required under this section  
24 is guilty of a misdemeanor punishable by imprisonment for not more  
25 than 1 year or a fine of not more than \$5,000.00, or both.

26 (14) In collaboration with the department of state police, the  
27 department of technology, management, and budget shall establish  
28 and maintain an automated fingerprint identification system  
29 database that would allow the department of state police to store





1 and maintain all fingerprints submitted under this section and  
2 would provide for an automatic notification at the time a  
3 subsequent criminal arrest fingerprint card submitted into the  
4 system matches a set of fingerprints previously submitted under  
5 this section. ~~Upon~~**On** notification, the department of state police  
6 shall immediately notify the department and the department shall  
7 immediately contact each respective adult foster care facility or  
8 staffing agency with which that individual is associated.  
9 Information in the database established under this subsection is  
10 confidential, is not subject to disclosure under the freedom of  
11 information act, 1976 PA 442, MCL 15.231 to 15.246, and ~~shall~~**must**  
12 not be disclosed to any person except for purposes of this act or  
13 for law enforcement purposes.

14 (15) If an individual independently contracts with an adult  
15 foster care facility, subsections (1) and (2) do not apply if the  
16 individual is not under the adult foster care facility's control  
17 and the contractual work performed by the individual is not  
18 directly related to the clinical, health care, or personal services  
19 delivered by the adult foster care facility or if the individual's  
20 duties are not performed on an ongoing basis with direct access to  
21 residents. This exception includes, but is not limited to, an  
22 individual who independently contracts with the adult foster care  
23 facility to provide utility, maintenance, construction, or  
24 communication services.

25 (16) The department shall maintain an electronic web-based  
26 system to assist the adult foster care facilities and staffing  
27 agencies required to check relevant registries and conduct criminal  
28 history checks of its employees and independent contractors and to  
29 provide for an automated notice to the adult foster care facilities



1 and staffing agencies for the individuals entered in the system  
2 who, since the initial criminal history check, have been convicted  
3 of a disqualifying offense or have been the subject of a  
4 substantiated finding of abuse, neglect, or misappropriation of  
5 property. The department may charge a staffing agency a 1-time set-  
6 up fee of up to \$100.00 for access to the electronic web-based  
7 system under this section.

8 (17) As used in this section:

9 (a) "Convicted" means either of the following:

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

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

19 (b) "Covered health facility" means a nursing home, county  
20 medical care facility, hospice, hospital that provides swing bed  
21 services, home for the aged, or home health agency licensed under  
22 article 17 of the public health code, 1978 PA 368, MCL 333.20101 to  
23 ~~333.22260~~. **333.21925**.

24 (c) "Criminal history check conducted in compliance with this  
25 section" includes a criminal history check conducted under this  
26 section, under section 134a of the mental health code, 1974 PA 258,  
27 MCL 330.1134a, or under section 20173a of the public health code,  
28 1978 PA 368, MCL 333.20173a.

29 (d) "Direct access" means access to a resident or resident's



1 property, financial information, medical records, treatment  
2 information, or any other identifying information.

3 (e) "Home health agency" means that term as defined in section  
4 20173a of the public health code, 1978 PA 368, MCL 333.20173a.

5 (f) "Independent contract" means a contract entered into by an  
6 adult foster care facility with an individual who provides the  
7 contracted services independently or a contract entered into by an  
8 adult foster care facility with a staffing agency that complies  
9 with the requirements of this section to provide the contracted  
10 services to the adult foster care facility on behalf of the  
11 staffing agency.

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

15 (h) "Staffing agency" means an entity that recruits candidates  
16 and provides temporary and permanent qualified staffing for adult  
17 foster care facilities, including independent contractors.

18 ~~(i) "Title XIX" means title XIX of the social security act, 42~~  
19 ~~USC 1396 to 1396w-5.~~

20 (i) ~~(j)~~—"Under the adult foster care facility's control" means  
21 an individual employed by or under independent contract with an  
22 adult foster care facility for whom the adult foster care facility  
23 does both of the following:

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

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

29 (A) The policy or procedures the individual must follow in



1 performing his or her duties.

2 (B) The tasks performed by the individual.

3 (C) The individual's work schedule.

4 (D) The supervision or evaluation of the individual's work or  
5 job performance, including imposing discipline or granting  
6 performance awards.

7 (E) The compensation the individual receives for performing  
8 his or her duties.

9 (F) The conditions under which the individual performs his or  
10 her duties.

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

13 Enacting section 2. This amendatory act does not take effect  
14 unless Senate Bill No. \_\_\_\_ or House Bill No. 5510 (request no.  
15 04667'19) of the 100th Legislature is enacted into law.

