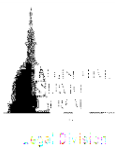


HOUSE BILL NO. 5715

April 24, 2020, Introduced by Rep. Sheppard and referred to the Committee on Government Operations.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 20173a, 21564, 21911, 21913, and 22235 (MCL 333.20173a, 333.21564, 333.21911, 333.21913, and 333.22235), section 20173a as amended by 2017 PA 167, section 21564 as added by 1990 PA 252, sections 21911 and 21913 as added by 2017 PA 172, and section 22235 as amended by 2002 PA 619, and by adding sections 20173c, 21564a, 21914, and 22235a.

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
4 has direct access to or provides direct services to patients or
5 residents in the covered facility if the individual satisfies 1 or
6 more of the following:

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

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

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

24 (ii) A felony involving cruelty or torture.

25 (iii) A felony under chapter XXA of the Michigan penal code,
26 1931 PA 328, MCL 750.145m to 750.145r.

27 (iv) A felony involving criminal sexual conduct.

28 (v) A felony involving abuse or neglect.

29 (vi) A felony involving the use of a firearm or dangerous



1 weapon.

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

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

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

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

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

26 (iii) A misdemeanor involving criminal sexual conduct.

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

29 (v) A misdemeanor involving abuse or neglect.



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

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

10 (ii) A misdemeanor involving home invasion.

11 (iii) A misdemeanor involving embezzlement.

12 (iv) A misdemeanor involving negligent homicide or a violation
13 of section 601d(1) of the Michigan vehicle code, 1949 PA 300, MCL
14 257.601d.

15 (v) A misdemeanor involving larceny unless otherwise provided
16 under subdivision (g).

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

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

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

29 (i) A misdemeanor for assault if there was no use of a firearm



1 or dangerous weapon and no intent to commit murder or inflict great
2 bodily injury.

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

5 (iii) A misdemeanor under part 74 unless otherwise provided
6 under subdivision (g).

7 (g) 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 year immediately preceding the date of application for
12 employment or clinical privileges or the date of the execution of
13 the independent contract:

14 (i) A misdemeanor under part 74 if the individual, at the time
15 of conviction, is under the age of 18.

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

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

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

26 (2) Except as otherwise provided in this subsection or
27 subsection (5), a covered facility shall not employ, independently
28 contract with, or grant privileges to an individual who regularly
29 has direct access to or provides direct services to patients or



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

7 (a) An individual who is employed by, under independent
8 contract to, or granted clinical privileges in a covered facility
9 before April 1, 2006. On or before April 1, 2011, an individual who
10 is exempt under this subdivision and who has not been the subject
11 of a criminal history check conducted in compliance with this
12 section shall provide the department of state police with a set of
13 fingerprints and the department of state police shall input those
14 fingerprints into the automated fingerprint identification system
15 database established under subsection (13). An individual who is
16 exempt under this subdivision is not limited to working within the
17 covered facility with which he or she is employed by, under
18 independent contract to, or granted clinical privileges on April 1,
19 2006 but may transfer to another covered facility, adult foster
20 care facility, or mental health facility. If an individual who is
21 exempt under this subdivision is subsequently convicted of a crime
22 described under subsection (1)(a) to (g) or found to be the subject
23 of a substantiated finding described under subsection (1)(i) or an
24 order or disposition described under subsection (1)(h), or is found
25 to have been convicted of a relevant crime described under 42 USC
26 1320a-7(a), then he or she is no longer exempt and shall be
27 terminated from employment or denied employment or clinical
28 privileges.

29 (b) An individual who is under an independent contract with a



1 covered facility if he or she is not under the facility's control
2 and the services for which he or she is contracted are not directly
3 related to the provision of services to a patient or resident or if
4 the services for which he or she is contracted allow for direct
5 access to the patients or residents but are not performed on an
6 ongoing basis. This exception includes, but is not limited to, an
7 individual who is under an independent contract with the covered
8 facility to provide utility, maintenance, construction, or
9 communications services.

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



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

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



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



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



1 criminal history check. The notice ~~shall~~**must** also include
2 information regarding where to file and describing the appellate
3 procedures established under section 20173b.

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

10 (a) The covered facility requests the criminal history check
11 or criminal history record information under this section ~~upon~~**on**
12 conditionally employing or conditionally granting clinical
13 privileges to the individual.

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

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

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

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

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



1 (v) That he or she understands that the conditions described
2 in subparagraphs (i) to (iv) may result in the termination of his or
3 her employment or clinical privileges and that those conditions are
4 good cause for termination.

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

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



1 (ii) Before the individual has direct access to or provides
2 direct services to patients or residents of the covered facility,
3 the individual signs a statement in writing that he or she has
4 resided in this state without interruption for at least the
5 immediately preceding 12-month period.

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

11 (6) The department shall develop and distribute a model form
12 for the statements required under subsection (5) (b) and (c). The
13 department shall make the model form available to covered
14 facilities ~~upon~~**on** request at no charge.

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

22 (8) An individual who knowingly provides false information
23 regarding his or her identity, criminal convictions, or
24 substantiated findings on a statement described in subsection
25 (5) (b) (i) to (iii) is guilty of a misdemeanor punishable by
26 imprisonment for not more than 93 days or a fine of not more than
27 \$500.00, or both.

28 (9) A staffing agency or covered facility shall use criminal
29 history record information obtained under subsection (3) or (4)



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

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



1 regulations allow the federal criminal record to be used for
2 subsequent authorized uses, as determined in an order issued by the
3 department, a staffing agency or covered facility may rely on the
4 criminal history record information provided by the relevant
5 licensing or regulatory department under this subsection and a
6 request to the Federal Bureau of Investigation to make a subsequent
7 determination of the existence of any national criminal history
8 pertaining to the applicant is not necessary if all of the
9 following requirements are met:

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

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

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

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

26 (a) Agree in writing to report to the staffing agency or
27 covered facility immediately upon being arraigned for 1 or more of
28 the criminal offenses listed in subsection (1) (a) to (g), upon
29 being convicted of 1 or more of the criminal offenses listed in



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

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

10 (12) In addition to sanctions set forth in section 20165, a
11 licensee, owner, administrator, or operator of a staffing agency or
12 covered facility who knowingly and willfully fails to conduct the
13 criminal history checks as required under this section is guilty of
14 a misdemeanor punishable by imprisonment for not more than 1 year
15 or a fine of not more than \$5,000.00, or both.

16 (13) The department of state police and the Federal Bureau of
17 Investigation shall store and retain all fingerprints submitted
18 under this section and provide for an automatic notification if and
19 when subsequent criminal information submitted into the system
20 matches a set of fingerprints previously submitted under this
21 section. ~~Upon~~ **On** such notification, the department of state police
22 shall immediately notify the department and the department shall
23 immediately contact each respective staffing agency or covered
24 facility with which that individual is associated. Information in
25 the database established under this subsection is confidential, is
26 not subject to disclosure under the freedom of information act,
27 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to
28 any person except for purposes of this act or for law enforcement
29 purposes.



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

13 (15) **This section is subject to section 20173c.**

14 (16) ~~(15)~~As used in this section:

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

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

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

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

28 (c) "Covered facility" means a health facility or agency that
29 is a nursing home, county medical care facility, hospice, hospital



1 that provides swing bed services, home for the aged, or home health
2 agency.

3 (d) "Criminal history check conducted in compliance with this
4 section" includes a criminal history check conducted under this
5 section, under section 134a of the mental health code, 1974 PA 258,
6 MCL 330.1134a, or under section 34b of the adult foster care
7 facility licensing act, 1979 PA 218, MCL 400.734b.

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

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

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

24 (h) "Medicare" means benefits under the federal Medicare
25 program established under title XVIII of the social security act,
26 42 USC 1395 to 1395III.

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



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

4 (k) "Under the facility's control" means an individual
5 employed by or under independent contract with a covered facility
6 for whom the covered facility does both of the following:

7 (i) Determines whether the individual who has access to
8 patients or residents may provide care, treatment, or other similar
9 support service functions to patients or residents served by the
10 covered facility.

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

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

14 (B) The tasks performed by the individual.

15 (C) The individual's work schedule.

16 (D) The supervision or evaluation of the individual's work or
17 job performance, including imposing discipline or granting
18 performance awards.

19 (E) The compensation the individual receives for performing
20 his or her duties.

21 (F) The conditions under which the individual performs his or
22 her duties.

23 **Sec. 20173c. Notwithstanding any provision of section 20173a**
24 **to the contrary, during the state of emergency declared under**
25 **Executive Order No. 2020-30 or any extension of that order, the**
26 **department may temporarily suspend any law or regulation to the**
27 **extent that it requires fingerprinting of individuals for**
28 **employment with, independently contracting with, or granting**
29 **clinical privileges to a covered facility. "Covered facility" means**



1 **that term as defined in section 20173a.**

2 Sec. 21564. (1) ~~Upon~~ **Subject to section 21564a, on** request of
3 a hospital with less than 100 beds located in a nonurbanized area,
4 the department may waive the applicability of a specified licensure
5 requirement if the department determines that strict compliance
6 with the licensure requirement is not necessary to protect the
7 public health, safety, and welfare in light of the health care
8 provided by or in the hospital. The department may impose
9 conditions upon a waiver under this section to protect the public
10 health, safety, and welfare.

11 (2) An application for a waiver under this section shall be on
12 a form provided by the department.

13 (3) A waiver granted by the department under this section
14 shall not exceed 2 years, except that the department may renew the
15 waiver for subsequent periods if the hospital continues to meet the
16 requirements of this section.

17 (4) As used in this section, "nonurbanized area" means that
18 term as defined in section 21551.

19 **Sec. 21564a. (1) Notwithstanding any provision of this part to**
20 **the contrary, during the states of emergency and disaster declared**
21 **under Executive Order No. 2020-49 or any extension of that order,**
22 **the department may grant a waiver under section 21564 to any**
23 **hospital in this state, regardless of number of beds or location,**
24 **for the purpose of providing care during the COVID-19 pandemic, to**
25 **construct, acquire, or operate a temporary or mobile facility for**
26 **any health care purpose, regardless of where the facility is**
27 **located. A waiver issued under this section may be renewed by the**
28 **department until the end of the declared states of emergency and**
29 **disaster.**



1 **(2) As used in this section, "COVID-19" means coronavirus**
2 **disease 2019 (COVID-19).**

3 Sec. 21911. (1) ~~The~~**Subject to section 21914, the** department
4 may grant registration as a nurse aide to an applicant who meets
5 all of the following requirements:

6 (a) Submits an application on a form and in a manner
7 prescribed by the department.

8 (b) Pays the fee prescribed in section 21919.

9 (c) Demonstrates to the department that he or she has
10 successfully completed a nurse aide training program and a
11 competency examination approved by the department.

12 (d) Meets the requirements for registration in rules
13 promulgated under section 21923.

14 (2) The department may grant a permit as a nurse aide trainer
15 to an applicant who meets all of the following requirements:

16 (a) Submits an application on a form and in a manner
17 prescribed by the department.

18 (b) Pays the fee prescribed in section 21919.

19 (c) Is a registered professional nurse licensed under article
20 15 who meets the requirements of 42 CFR 483.152(a)(5)(i) and (ii),
21 or who meets the requirements for a permit in rules promulgated
22 under section 21923.

23 (3) The department may grant a permit as a nurse aide training
24 program to an applicant that meets all of the following
25 requirements:

26 (a) Submits an application on a form and in a manner
27 prescribed by the department.

28 (b) Pays the fee prescribed in section 21919.

29 (c) Meets the requirements for a permit in rules promulgated



1 under section 21923.

2 (d) Demonstrates to the department that the applicant's
3 curriculum is consistent with other nurse aide training programs as
4 provided by rules promulgated by the department under this part.

5 (4) A registration or permit is not transferable. A
6 certificate of registration or certificate of permit must state the
7 persons to which it applies.

8 Sec. 21913. ~~The~~ **Subject to section 21914, the** department may
9 grant registration to an applicant who is from another state if the
10 applicant meets either of the following requirements:

11 (a) The applicant passes a training program that the
12 department determines is equivalent to or exceeds a nurse aide
13 training program offered in this state and the applicant passes a
14 competency examination approved by the department.

15 (b) The applicant's status as a nurse aide in the other state
16 is in good standing, as verified by that state's nurse aide
17 registry, and the department determines that the other state's
18 training program is equivalent to or exceeds a nurse aide training
19 program offered in this state.

20 **Sec. 21914. Notwithstanding any provision of this part to the**
21 **contrary, during the states of emergency and disaster declared**
22 **under Executive Order No. 2020-49 or any extension of that order,**
23 **the department may grant a temporary registration as a certified**
24 **nurse aide to an applicant, regardless of whether the applicant**
25 **demonstrates to the department that he or she has successfully**
26 **completed the examination requirements of section 21911 or 21913. A**
27 **temporary registration granted under this section is valid for 28**
28 **days and may be renewed by the department until the end of the**
29 **declared states of emergency and disaster.**



1 Sec. 22235. (1) ~~The~~ **Subject to section 22235a, the** department
 2 may waive otherwise applicable provisions of this part and
 3 procedural requirements and criteria for review upon a showing by
 4 the applicant, by affidavit, of all of the following:

5 (a) The necessity for immediate or temporary relief due to
 6 natural disaster, fire, unforeseen safety consideration, or other
 7 emergency circumstances.

8 (b) The serious adverse effect of delay on the applicant and
 9 the community that would be occasioned by compliance with the
 10 otherwise applicable requirements of this part and rules
 11 promulgated under this part.

12 (c) The lack of substantial change in facilities or services
 13 that existed before the emergency circumstances established under
 14 subdivision (a).

15 (d) The temporary nature of the construction of facilities or
 16 the services that will not preclude different disposition of longer
 17 term determinations in a subsequent application for a certificate
 18 of need not made under this section.

19 (2) The department may issue an emergency certificate of need
 20 after necessary and appropriate review. A record of the review
 21 ~~shall~~ **must** be made, including copies of affidavits and other
 22 documentation. Findings and conclusions ~~shall~~ **must** be made as to an
 23 application for an emergency certificate of need, whether the
 24 emergency certificate of need is issued or denied.

25 (3) An emergency certificate of need issued under this section
 26 is a final decision and the applicant is not required to submit a
 27 formal application for a second review. A certificate of need
 28 issued under this section may be subject to special limitations and
 29 restrictions, in regard to duration and right of extension or



1 renewal and other factors, imposed by the department.

2 **Sec. 22235a. Notwithstanding any provision of this part to the**
3 **contrary, during the states of emergency and disaster declared**
4 **under Executive Order No. 2020-49 or any extension of that order,**
5 **the department may issue an emergency certificate of need to an**
6 **applicant and defer strict compliance with the procedural**
7 **requirements of section 22235.**

