

SENATE BILL No. 676

December 15, 2015, Introduced by Senators HOPGOOD, MARLEAU, BIEDA, NOFS, KNEZEK and JOHNSON and referred to the Committee on Families, Seniors and Human Services.

A bill to amend 1979 PA 218, entitled "Adult foster care facility licensing act," by amending sections 4 and 34b (MCL 400.704 and 400.734b), section 4 as amended by 2013 PA 156 and section 34b as amended by 2014 PA 73.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. (1) "Council" means the adult foster care licensing
2 advisory council created in section 8.

3 (2) "Department" means the department of ~~human~~
4 ~~services~~. **LICENSING AND REGULATORY AFFAIRS.**

5 (3) "Developmental disability" means that term as defined in
6 section 100a of the mental health code, 1974 PA 258, MCL 330.1100a.

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

1 (5) "Director" means the director of the department.

2 (6) "Do-not-resuscitate order" means a document executed under
3 the Michigan do-not-resuscitate procedure act, 1996 PA 193, MCL
4 333.1051 to 333.1067, directing that, in the event a resident
5 suffers cessation of both spontaneous respiration and circulation,
6 no resuscitation will be initiated.

7 (7) "Foster care" means the provision of supervision, personal
8 care, and protection in addition to room and board, for 24 hours a
9 day, 5 or more days a week, and for 2 or more consecutive weeks for
10 compensation.

11 Sec. 34b. (1) In addition to the restrictions prescribed in
12 sections 13, 22, and 31, and except as otherwise provided in
13 subsection (2), an adult foster care facility shall not employ or
14 independently contract with an individual who regularly has direct
15 access to or provides direct services to residents of the adult
16 foster care facility if the individual satisfies 1 or more of the
17 following:

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

20 (b) Has been convicted of any of the following felonies, an
21 attempt or conspiracy to commit any of those felonies, or any other
22 state or federal crime that is similar to the felonies described in
23 this subdivision, other than a felony for a relevant crime
24 described under 42 USC 1320a-7(a), unless 15 years have lapsed
25 since the individual completed all of the terms and conditions of
26 his or her sentencing, parole, and probation for that conviction
27 ~~prior to~~ **BEFORE** the date of application for employment or the date

1 of the execution of the independent contract:

2 (i) A felony that involves the intent to cause death or
3 serious impairment of a body function, that results in death or
4 serious impairment of a body function, that involves the use of
5 force or violence, or that involves the threat of the use of force
6 or violence.

7 (ii) A felony involving cruelty or torture.

8 (iii) A felony under chapter XXA of the Michigan penal code,
9 1931 PA 328, MCL 750.145m to 750.145r.

10 (iv) A felony involving criminal sexual conduct.

11 (v) A felony involving abuse or neglect.

12 (vi) A felony involving the use of a firearm or dangerous
13 weapon.

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

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

24 (d) Has been convicted of any of the following misdemeanors,
25 other than a misdemeanor for a relevant crime described under 42
26 USC 1320a-7(a), or a state or federal crime that is substantially
27 similar to the misdemeanors described in this subdivision, within

1 the 10 years immediately preceding the date of application for
2 employment or the date of the execution of the independent
3 contract:

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

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

11 (iii) A misdemeanor involving criminal sexual conduct.

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

14 (v) A misdemeanor involving abuse or neglect.

15 (e) Has been convicted of any of the following misdemeanors,
16 other than a misdemeanor for a relevant crime described under 42
17 USC 1320a-7(a), or a state or federal crime that is substantially
18 similar to the misdemeanors described in this subdivision, within
19 the 5 years immediately preceding the date of application for
20 employment or the date of the execution of the independent
21 contract:

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

24 (ii) A misdemeanor involving home invasion.

25 (iii) A misdemeanor involving embezzlement.

26 (iv) A misdemeanor involving negligent homicide or a violation
27 of section 601d(1) of the Michigan vehicle code, 1949 PA 300, MCL

1 257.601d.

2 (v) A misdemeanor involving larceny unless otherwise provided
3 under subdivision (g).

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

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

9 (f) Has been convicted of any of the following misdemeanors,
10 other than a misdemeanor for a relevant crime described under 42
11 USC 1320a-7(a), or a state or federal crime that is substantially
12 similar to the misdemeanors described in this subdivision, within
13 the 3 years immediately preceding the date of application for
14 employment or the date of the execution of the independent
15 contract:

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

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

21 (iii) A misdemeanor under part 74 of the public health code,
22 1978 PA 368, MCL 333.7401 to 333.7461, unless otherwise provided
23 under subdivision (g).

24 (g) Has been convicted of any of the following misdemeanors,
25 other than a misdemeanor for a relevant crime described under 42
26 USC 1320a-7(a), or a state or federal crime that is substantially
27 similar to the misdemeanors described in this subdivision, within

1 the year immediately preceding the date of application for
2 employment or the date of the execution of the independent
3 contract:

4 (i) A misdemeanor under part 74 of the public health code,
5 1978 PA 368, MCL 333.7401 to 333.7461, if the individual, at the
6 time of conviction, is under the age of 18.

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

10 (h) Is the subject of an order or disposition under section
11 16b of chapter IX of the code of criminal procedure, 1927 PA 175,
12 MCL 769.16b.

13 (i) Engages in conduct that becomes the subject of a
14 substantiated finding of neglect, abuse, or misappropriation of
15 property by a state or federal agency ~~according to~~ **UNDER** an
16 investigation conducted in accordance with 42 USC 1395i-3 or 1396r.

17 (2) Except as otherwise provided in this subsection, ~~or~~
18 ~~subsection (6),~~ an adult foster care facility shall not employ or
19 independently contract with an individual who has direct access to
20 residents until the adult foster care facility or staffing agency
21 has conducted a criminal history check in compliance with this
22 section or has received criminal history record information in
23 compliance with subsections (3) and ~~(11)~~ **(7)**. This subsection and
24 subsection (1) do not apply to an individual who is employed by or
25 under contract to an adult foster care facility before April 1,
26 2006. On or before April 1, 2011, an individual who is exempt under
27 this subsection and who has not been the subject of a criminal

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

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

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

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

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

1 by the department of state police or the ~~federal bureau of~~
2 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** from the individual
3 who is the subject of the criminal history check. The department of
4 state police shall conduct a criminal history check on the
5 individual named in the request. The department of state police
6 shall provide the department with a written report of the criminal
7 history check conducted under this subsection. The report shall
8 contain any criminal history record information on the individual
9 maintained by the department of state police.

10 (5) Upon receipt of the written consent to conduct a criminal
11 history check and identification required under subsection (3), if
12 the individual has applied for employment either as an employee or
13 as an independent contractor with an adult foster care facility or
14 staffing agency, the adult foster care facility or staffing agency
15 that has made a ~~good faith~~ **GOOD-FAITH** offer of employment or
16 independent contract shall comply with subsection (4) and shall
17 make a request to the department of state police to forward the
18 individual's fingerprints to the ~~federal bureau of investigation~~.
19 **FEDERAL BUREAU OF INVESTIGATION**. The department of state police
20 shall request the ~~federal bureau of investigation~~ **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

1 subsection (4) and the results of the ~~federal bureau of~~
2 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** determination to the
3 department within 30 days after the request is made. If the
4 requesting adult foster care facility or staffing agency is not a
5 state department or agency and if criminal history record
6 information is disclosed on the written report of the criminal
7 history check or the ~~federal bureau of investigation~~ **FEDERAL BUREAU**
8 **OF INVESTIGATION** determination that resulted in a conviction, the
9 department shall notify the adult foster care facility or staffing
10 agency and the individual in writing of the type of crime disclosed
11 on the written report of the criminal history check or the ~~federal~~
12 ~~bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION**
13 determination without disclosing the details of the crime. The
14 notification shall inform the adult foster care facility or
15 staffing agency and the applicant regarding the appeal process in
16 section 34c and shall include a statement that the individual has a
17 right to appeal the information relied upon by the adult foster
18 care facility or staffing agency in making its decision regarding
19 his or her employment eligibility based on the criminal history
20 check. Any charges imposed by the department of state police or the
21 ~~federal bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION** for
22 conducting a criminal history check or making a determination under
23 this subsection shall be paid in the manner required under
24 subsection (4).

25 ~~—— (6) If an adult foster care facility determines it necessary~~
26 ~~to employ or independently contract with an individual before~~
27 ~~receiving the results of the individual's criminal history check or~~

1 ~~criminal history record information required under this section,~~
2 ~~the adult foster care facility may conditionally employ the~~
3 ~~individual if all of the following apply:~~

4 ~~—— (a) The adult foster care facility requests the criminal~~
5 ~~history check or criminal history record information required under~~
6 ~~this section, upon conditionally employing the individual.~~

7 ~~—— (b) The individual signs a written statement indicating all of~~
8 ~~the following:~~

9 ~~—— (i) That he or she has not been convicted of 1 or more of the~~
10 ~~crimes that are described in subsection (1) (a) to (g) within the~~
11 ~~applicable time period prescribed by subsection (1) (a) to (g).~~

12 ~~—— (ii) That he or she is not the subject of an order or~~
13 ~~disposition described in subsection (1) (h).~~

14 ~~—— (iii) That he or she has not been the subject of a~~
15 ~~substantiated finding as described in subsection (1) (i).~~

16 ~~—— (iv) The individual agrees that, if the information in the~~
17 ~~criminal history check conducted under this section does not~~
18 ~~confirm the individual's statement under subparagraphs (i) to~~
19 ~~(iii), his or her employment will be terminated by the adult foster~~
20 ~~care facility as required under subsection (1) unless and until the~~
21 ~~individual can prove that the information is incorrect.~~

22 ~~—— (v) That he or she understands the conditions described in~~
23 ~~subparagraphs (i) to (iv) that result in the termination of his or~~
24 ~~her employment and that those conditions are good cause for~~
25 ~~termination.~~

26 ~~—— (c) Except as otherwise provided in this subdivision, the~~
27 ~~adult foster care facility does not permit the individual to have~~

1 ~~regular direct access to or provide direct services to residents in~~
2 ~~the adult foster care facility without supervision until the~~
3 ~~criminal history check or criminal history record information is~~
4 ~~obtained and the individual is eligible for that employment. If~~
5 ~~required under this subdivision, the adult foster care facility~~
6 ~~shall provide on site supervision of an individual in the facility~~
7 ~~on a conditional basis under this subsection by an individual who~~
8 ~~has undergone a criminal history check conducted in compliance with~~
9 ~~this section. An adult foster care facility may permit an~~
10 ~~individual in the facility on a conditional basis under this~~
11 ~~subsection to have regular direct access to or provide direct~~
12 ~~services to residents in the adult foster care facility without~~
13 ~~supervision if all of the following conditions are met:~~

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

23 ~~—— (ii) Before the individual has direct access to or provides~~
24 ~~direct services to residents of the adult foster care facility, the~~
25 ~~individual signs a statement in writing that he or she has resided~~
26 ~~in this state without interruption for at least the immediately~~
27 ~~preceding 12 month period.~~

1 ~~—— (iii) If applicable, the individual provides to the department~~
2 ~~of state police a set of fingerprints on or before the expiration~~
3 ~~of 10 business days following the date the individual was~~
4 ~~conditionally employed under this subsection.~~

5 ~~—— (7) The department shall develop and distribute the model form~~
6 ~~for the statements required under subsection (6) (b) and (c). The~~
7 ~~department shall make the model form available to adult foster care~~
8 ~~facilities upon request at no charge.~~

9 ~~—— (8) If an individual is conditionally employed under~~
10 ~~subsection (6), and the information under subsection (3) or report~~
11 ~~under subsection (4) or (5), if applicable, does not confirm the~~
12 ~~individual's statement under subsection (6) (b) (i) to (iii), the~~
13 ~~adult foster care facility shall terminate the individual's~~
14 ~~employment as required by subsection (1).~~

15 ~~—— (9) An individual who knowingly provides false information~~
16 ~~regarding his or her identity, criminal convictions, or~~
17 ~~substantiated findings on a statement described in subsection~~
18 ~~(6) (b) (i) to (iii) is guilty of a misdemeanor punishable by~~
19 ~~imprisonment for not more than 93 days or a fine of not more than~~
20 ~~\$500.00, or both.~~

21 (6) ~~(10)~~ An adult foster care facility or staffing agency
22 shall use criminal history record information obtained under
23 subsection (3), (4), or (5) only for the purpose of evaluating an
24 individual's qualifications for employment in the position for
25 which he or she has applied. ~~and for the purposes of subsections~~
26 ~~(6) and (8).~~ An adult foster care facility or staffing agency or an
27 employee of the adult foster care facility or staffing agency shall

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

14 (7) ~~(11)~~ Upon consent of an individual as required in
15 subsection (3) and upon request from an adult foster care facility
16 or staffing agency that has made a ~~good faith~~ **GOOD-FAITH** offer of
17 employment or an independent contract to the individual, the
18 ~~relevant licensing or regulatory~~ department shall review the
19 criminal history record information, if any, and notify the
20 requesting adult foster care facility or staffing agency of the
21 information in the manner prescribed in subsection (4) or (5).
22 Until the ~~federal bureau of investigation~~ **FEDERAL BUREAU OF**
23 **INVESTIGATION** implements an automatic notification system similar
24 to the system required of the state police under subsection ~~(14)~~
25 (10) and federal regulations allow the federal criminal record to
26 be used for subsequent authorized uses, as determined in an order
27 issued by the department, an adult foster care facility or staffing

1 agency may rely on the criminal history record information provided
2 by the ~~relevant licensing or regulatory~~ department under this
3 subsection and a request to the ~~federal bureau of investigation~~
4 **FEDERAL BUREAU OF INVESTIGATION** to make a subsequent determination
5 of the existence of any national criminal history pertaining to the
6 individual is not necessary if all of the following requirements
7 are met:

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

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

17 (c) The individual 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 (8) ~~(12)~~As a condition of continued employment, each employee
22 or independent contractor shall do both of the following:

23 (a) Agree in writing to report to the adult foster care
24 facility or staffing agency immediately upon being arraigned on 1
25 or more of the criminal offenses listed in subsection (1)(a) to
26 (g), upon being convicted of 1 or more of the criminal offenses
27 listed in subsection (1)(a) to (g), upon becoming the subject of an

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

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

8 (9) ~~(13)~~—In addition to sanctions set forth in this act, a
9 licensee, owner, administrator, or operator of an adult foster care
10 facility or staffing agency who knowingly and willfully fails to
11 conduct the criminal history checks as required under this section
12 is guilty of a misdemeanor punishable by imprisonment for not more
13 than 1 year or a fine of not more than \$5,000.00, or both.

14 (10) ~~(14)~~—In collaboration with the department of state
15 police, the department of technology, management, and budget shall
16 establish and maintain an automated fingerprint identification
17 system database that would allow the department of state police to
18 store and maintain all fingerprints submitted under this section
19 and would provide for an automatic notification at the time a
20 subsequent criminal arrest fingerprint card submitted into the
21 system matches a set of fingerprints previously submitted under
22 this section. Upon ~~such~~ notification, the department of state
23 police shall immediately notify the department and the department
24 shall immediately contact each respective adult foster care
25 facility or staffing agency with which that individual is
26 associated. Information in the database established under this
27 subsection is confidential, is not subject to disclosure under the

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

4 **(11)** ~~(15)~~—If an individual independently contracts with an
5 adult foster care facility, subsections (1) and (2) do not apply if
6 the individual is not under the adult foster care facility's
7 control and the contractual work performed by the individual is not
8 directly related to the clinical, health care, or personal services
9 delivered by the adult foster care facility or if the individual's
10 duties are not performed on an ongoing basis with direct access to
11 residents. This exception includes, but is not limited to, an
12 individual who independently contracts with the adult foster care
13 facility to provide utility, maintenance, construction, or
14 communication services.

15 **(12)** ~~(16)~~—The department shall maintain an electronic web-
16 based system to assist the adult foster care facilities and
17 staffing agencies required to check relevant registries and conduct
18 criminal history checks of its employees and independent
19 contractors and to provide for an automated notice to the adult
20 foster care facilities and staffing agencies for the individuals
21 entered in the system who, since the initial criminal history
22 check, have been convicted of a disqualifying offense or have been
23 the subject of a substantiated finding of abuse, neglect, or
24 misappropriation of property. The department may charge a staffing
25 agency a 1-time set-up fee of up to \$100.00 for access to the
26 electronic web-based system under this section.

27 **(13)** ~~(17)~~—An adult foster care facility, staffing agency, or a

1 prospective employee covered under this section may not be charged
2 for the cost of a criminal history check required under this act.

3 (14) ~~(18)~~—As used in this section:

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

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

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

14 (b) "Covered health facility" means a nursing home, county
15 medical care facility, hospice, hospital that provides swing bed
16 services, home for the aged, or home health agency licensed under
17 article 17 of the public health code, 1978 PA 368, MCL 333.20101 to
18 333.22260.

19 (c) "Criminal history check conducted in compliance with this
20 section" includes a criminal history check conducted under this
21 section, under section 134a of the mental health code, 1974 PA 258,
22 MCL 330.1134a, or under section 20173a of the public health code,
23 1978 PA 368, MCL 333.20173a.

24 (d) "Direct access" means access to a resident or resident's
25 property, financial information, medical records, treatment
26 information, or any other identifying information.

27 (e) "Home health agency" means that term as defined in section

1 20173a of the public health code, 1978 PA 368, MCL 333.20173a.

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

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

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

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

17 (j) "Under the adult foster care facility's control" means an
18 individual employed by or under independent contract with an adult
19 foster care facility for whom the adult foster care facility does
20 both of the following:

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

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

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

1 (B) The tasks performed by the individual.

2 (C) The individual's work schedule.

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

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

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

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