

HOUSE BILL No. 6039

May 17, 2018, Introduced by Reps. Yanez, Faris, Green, Gay-Dagnogo, Hertel, Chirkun, Sowerby, Hornberger, Marino, Elder, Lucido and Yaroeh and referred to the Committee on Law and Justice.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

10 (b) Has been convicted of any of the following felonies, an

1 attempt or conspiracy to commit any of those felonies, or any other
2 state or federal crime that is similar to the felonies described in
3 this subdivision, other than a felony for a relevant crime
4 described under 42 USC 1320a-7(a), unless 15 years have lapsed
5 since the individual completed all of the terms and conditions of
6 his or her sentencing, parole, and probation for that conviction
7 prior to the date of application for employment or clinical
8 privileges or the date of the execution of the independent
9 contract:

10 (i) A felony that involves the intent to cause death or
11 serious impairment of a body function, that results in death or
12 serious impairment of a body function, that involves the use of
13 force or violence, or that involves the threat of the use of force
14 or violence.

15 (ii) A felony involving cruelty or torture.

16 (iii) A felony under chapter XXA of the Michigan penal code,
17 1931 PA 328, MCL 750.145m to 750.145r.

18 (iv) A felony involving criminal sexual conduct.

19 (v) A felony involving abuse or neglect.

20 (vi) A felony involving the use of a firearm or dangerous
21 weapon.

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

24 (c) Has been convicted of a felony or an attempt or conspiracy
25 to commit a felony, other than a felony for a relevant crime
26 described under 42 USC 1320a-7(a) or a felony described under
27 subdivision (b), unless 10 years have lapsed since the individual

1 completed all of the terms and conditions of his or her sentencing,
2 parole, and probation for that conviction prior to the date of
3 application for employment or clinical privileges or the date of
4 the execution of the independent contract.

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

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

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

19 (iii) A misdemeanor involving criminal sexual conduct.

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

22 (v) A misdemeanor involving abuse or neglect.

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

1 employment or clinical privileges or the date of the execution of
2 the independent 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, 1940 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,
15 or 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 clinical privileges or the date of the execution of
23 the independent 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

1 otherwise provided under subdivision (g).

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

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

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

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

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

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

25 (2) Except as otherwise provided in this subsection or
26 subsection (5), a psychiatric facility or other facility defined in
27 42 USC 1396d(d) shall not employ, independently contract with, or

1 grant privileges to an individual who regularly has direct access
2 to or provides direct services to patients or residents in the
3 psychiatric facility or other facility defined in 42 USC 1396d(d)
4 until the psychiatric facility or other facility defined in 42 USC
5 1396d(d) or staffing agency has conducted a criminal history check
6 in compliance with this section or received criminal history record
7 information in compliance with subsection (3) or (10). This
8 subsection and subsection (1) do not apply to ~~any of the following:~~

9 ~~—— (a) An individual who is employed by, under independent~~
10 ~~contract to, or granted clinical privileges in a psychiatric~~
11 ~~facility or other facility defined in 42 USC 1396d(d) before April~~
12 ~~1, 2006. On or before April 1, 2011, an individual who is exempt~~
13 ~~under this subdivision and who has not been the subject of a~~
14 ~~criminal history check conducted in compliance with this section~~
15 ~~shall provide the department of state police with a set of~~
16 ~~fingerprints and the department of state police shall input those~~
17 ~~fingerprints into the automated fingerprint identification system~~
18 ~~database established under subsection (13). An individual who is~~
19 ~~exempt under this subdivision is not limited to working within the~~
20 ~~psychiatric facility or other facility defined in 42 USC 1396d(d)~~
21 ~~with which he or she is employed by, under independent contract to,~~
22 ~~or granted clinical privileges on April 1, 2006 but may transfer to~~
23 ~~another psychiatric facility or other facility defined in 42 USC~~
24 ~~1396d(d), covered health facility, or adult foster care facility.~~
25 ~~If an individual who is exempt under this subdivision is~~
26 ~~subsequently convicted of a crime described under subsection (1) (a)~~
27 ~~through (g) or found to be the subject of a substantiated finding~~

~~described under subsection (1)(i) or an order or disposition
described under subsection (1)(h), or is found to have been
convicted of a relevant crime described under subsection (1)(a),
then he or she is no longer exempt and shall be terminated from
employment or denied employment or clinical privileges.~~

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

(3) An individual who applies for employment either as an
employee or as an independent contractor or for clinical privileges
with a psychiatric facility or other facility defined in 42 USC
1396d(d) or a staffing agency and who has not been the subject of a
criminal history check conducted in compliance with this section
shall give written consent at the time of application for the
department of state police to conduct a criminal history check
under this section, along with identification acceptable to the
department of state police. If the applicant has been the subject
of a criminal history check conducted in compliance with this
section, the applicant shall give written consent at the time of

1 application for the psychiatric facility or other facility defined
2 in 42 USC 1396d(d) or staffing agency to obtain the criminal
3 history record information as prescribed in subsection (4) from the
4 relevant licensing or regulatory department and for the department
5 of state police to conduct a criminal history check under this
6 section if the requirements of subsection (10) are not met and a
7 request to the ~~federal bureau of investigation~~ **FEDERAL BUREAU OF**
8 **INVESTIGATION** to make a determination of the existence of any
9 national criminal history pertaining to the applicant is necessary,
10 along with identification acceptable to the department of state
11 police. Upon receipt of the written consent to obtain the criminal
12 history record information and identification required under this
13 subsection, the psychiatric facility or other facility defined in
14 42 USC 1396d(d) or staffing agency that has made a good-faith offer
15 of employment or an independent contract or clinical privileges to
16 the applicant shall request the criminal history record information
17 from the relevant licensing or regulatory department and shall make
18 a request regarding that applicant to the relevant licensing or
19 regulatory department to conduct a check of all relevant registries
20 in the manner required in subsection (4). If the requirements of
21 subsection (10) are not met and a request to the ~~federal bureau of~~
22 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** to make a subsequent
23 determination of the existence of any national criminal history
24 pertaining to the applicant is necessary, the psychiatric facility
25 or other facility defined in 42 USC 1396d(d) or staffing agency
26 shall proceed in the manner required in subsection (4). A staffing
27 agency that employs an applicant who regularly has direct access to

1 or provides direct services to patients or residents under an
2 independent contract with a psychiatric facility or other facility
3 defined in 42 USC 1396d(d) shall submit information regarding the
4 criminal history check conducted by the staffing agency to the
5 psychiatric facility or other facility defined in 42 USC 1396d(d)
6 that has made a good-faith offer of independent contract to that
7 applicant.

8 (4) Upon receipt of the written consent to conduct a criminal
9 history check and identification required under subsection (3), a
10 psychiatric facility or other facility defined in 42 USC 1396d(d)
11 or staffing agency that has made a good-faith offer of employment
12 or an independent contract or clinical privileges to the applicant
13 shall make a request to the department of state police to conduct a
14 criminal history check on the applicant, to input the applicant's
15 fingerprints into the automated fingerprint identification system
16 database, and to forward the applicant's fingerprints to the
17 ~~federal bureau of investigation.~~ **FEDERAL BUREAU OF INVESTIGATION.**

18 The department of state police shall request the ~~federal bureau of~~
19 ~~investigation.~~ **FEDERAL BUREAU OF INVESTIGATION** to make a
20 determination of the existence of any national criminal history
21 pertaining to the applicant. The applicant shall provide the
22 department of state police with a set of fingerprints. The request
23 shall be made in a manner prescribed by the department of state
24 police. The psychiatric facility or other facility defined in 42
25 USC 1396d(d) or staffing agency shall make the written consent and
26 identification available to the department of state police. The
27 psychiatric facility or other facility defined in 42 USC 1396d(d)

1 or staffing agency shall make a request regarding that applicant to
2 the relevant licensing or regulatory department to conduct a check
3 of all relevant registries established under federal and state law
4 and regulations for any substantiated findings of abuse, neglect,
5 or misappropriation of property. If the department of state police
6 or the ~~federal bureau of investigation~~ **FEDERAL BUREAU OF**
7 **INVESTIGATION** charges a fee for conducting the criminal history
8 check, the psychiatric facility or other facility defined in 42 USC
9 1396d(d) or staffing agency shall pay the cost of the charge. The
10 psychiatric facility or other facility defined in 42 USC 1396d(d)
11 or staffing agency shall not seek reimbursement for a charge
12 imposed by the department of state police or the ~~federal bureau of~~
13 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** from the individual
14 who is the subject of the criminal history check. A prospective
15 employee or a prospective independent contractor covered under this
16 section may not be charged for the cost of a criminal history check
17 required under this section. The department of state police shall
18 conduct a criminal history check on the applicant named in the
19 request. The department of state police shall provide the
20 department with a written report of the criminal history check
21 conducted under this subsection. The report shall contain any
22 criminal history record information on the applicant maintained by
23 the department of state police. The department of state police
24 shall provide the results of the ~~federal bureau of investigation~~
25 **FEDERAL BUREAU OF INVESTIGATION** determination to the department
26 within 30 days after the request is made. If the requesting
27 psychiatric facility or other facility defined in 42 USC 1396d(d)

1 or staffing agency is not a state department or agency and if
2 criminal history record information is disclosed on the written
3 report of the criminal history check or the ~~federal bureau of~~
4 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** determination that
5 resulted in a conviction, the department shall notify the
6 psychiatric facility or other facility defined in 42 USC 1396d(d)
7 or staffing agency and the applicant in writing of the type of
8 crime disclosed on the written report of the criminal history check
9 or the ~~federal bureau of investigation~~ **FEDERAL BUREAU OF**
10 **INVESTIGATION** determination without disclosing the details of the
11 crime. Any charges imposed by the department of state police or the
12 ~~federal bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION** for
13 conducting a criminal history check or making a determination under
14 this subsection shall be paid in the manner required under this
15 subsection. The notice shall include a statement that the applicant
16 has a right to appeal the information relied upon by the
17 psychiatric facility or other facility defined in 42 USC 1396d(d)
18 or staffing agency regarding his or her employment eligibility
19 based on the criminal history check. The notice shall also include
20 information regarding where to file and describing the appellate
21 procedures established under section 20173b of the public health
22 code, 1978 PA 368, MCL 333.20173b.

23 (5) If a psychiatric facility or other facility defined in 42
24 USC 1396d(d) determines it necessary to employ or grant clinical
25 privileges to an applicant before receiving the results of the
26 applicant's criminal history check or criminal history record
27 information under this section, the psychiatric facility or other

1 facility defined in 42 USC 1396d(d) may conditionally employ or
2 grant conditional clinical privileges to the individual if all of
3 the following apply:

4 (a) The psychiatric facility or other facility defined in 42
5 USC 1396d(d) requests the criminal history check or criminal
6 history record information under this section upon conditionally
7 employing or conditionally granting clinical privileges to the
8 individual.

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

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

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

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

19 (iv) The individual agrees that, if the information in the
20 criminal history check conducted under this section does not
21 confirm the individual's statements under subparagraphs (i) ~~through~~
22 **TO** (iii), his or her employment or clinical privileges will be
23 terminated by the psychiatric facility or other facility defined in
24 42 USC 1396d(d) as required under subsection (1) unless and until
25 the individual appeals and can prove that the information is
26 incorrect.

27 (v) That he or she understands the conditions described in

1 subparagraphs (i) ~~through~~ **TO** (iv) that result in the termination of
2 his or her employment or clinical privileges and that those
3 conditions are good cause for termination.

4 (c) Except as otherwise provided in this subdivision, the
5 psychiatric facility or other facility defined in 42 USC 1396d(d)
6 does not permit the individual to have regular direct access to or
7 provide direct services to patients or residents in the psychiatric
8 facility or other facility defined in 42 USC 1396d(d) without
9 supervision until the criminal history check or criminal history
10 record information is obtained and the individual is eligible for
11 that employment or clinical privileges. If required under this
12 subdivision, the psychiatric facility or other facility defined in
13 42 USC 1396d(d) shall provide on-site supervision of an individual
14 in the facility on a conditional basis under this subsection by an
15 individual who has undergone a criminal history check conducted in
16 compliance with this section. A psychiatric facility or other
17 facility defined in 42 USC 1396d(d) may permit an individual in the
18 facility on a conditional basis under this subsection to have
19 regular direct access to or provide direct services to patients or
20 residents in the psychiatric facility or other facility defined in
21 42 USC 1396d(d) without supervision if all of the following
22 conditions are met:

23 (i) The psychiatric facility or other facility defined in 42
24 USC 1396d(d), at its own expense and before the individual has
25 direct access to or provides direct services to patients or
26 residents of the psychiatric facility or other facility defined in
27 42 USC 1396d(d), conducts a search of public records on that

1 individual through the internet criminal history access tool
2 maintained by the department of state police and the results of
3 that search do not uncover any information that ~~would indicate~~
4 **INDICATES** that the individual is not eligible to have regular
5 direct access to or provide direct services to patients or
6 residents under this section.

7 (ii) Before the individual has direct access to or provides
8 direct services to patients or residents of the psychiatric
9 facility or other facility defined in 42 USC 1396d(d), the
10 individual signs a statement in writing that he or she has resided
11 in this state without interruption for at least the immediately
12 preceding 12-month period.

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

18 (6) The department shall develop and distribute a model form
19 for the statements required under subsection (5)(b) and (c). The
20 department shall make the model form available to psychiatric
21 facilities or other facility defined in 42 USC 1396d(d) subject to
22 this section upon request at no charge.

23 (7) If an individual is employed as a conditional employee or
24 is granted conditional clinical privileges under subsection (5),
25 and the information under subsection (3) or report under subsection
26 (4) does not confirm the individual's statement under subsection
27 (5)(b)(i) ~~through~~ **TO** (iii), the psychiatric facility or other

1 facility defined in 42 USC 1396d(d) shall terminate the
2 individual's employment or clinical privileges as required by
3 subsection (1).

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

10 (9) A psychiatric facility or other facility defined in 42 USC
11 1396d(d) or staffing agency shall use criminal history record
12 information obtained under subsection (3) or (4) only for the
13 purpose of evaluating an applicant's qualifications for employment,
14 an independent contract, or clinical privileges in the position for
15 which he or she has applied and for the purposes of subsections (5)
16 and (7). A psychiatric facility or other facility defined in 42 USC
17 1396d(d) or staffing agency or an employee of the psychiatric
18 facility or other facility defined in 42 USC 1396d(d) or staffing
19 agency shall not disclose criminal history record information
20 obtained under subsection (3) or (4) to a person who is not
21 directly involved in evaluating the applicant's qualifications for
22 employment, an independent contract, or clinical privileges. An
23 individual who knowingly uses or disseminates the criminal history
24 record information obtained under subsection (3) or (4) in
25 violation of this subsection is guilty of a misdemeanor punishable
26 by imprisonment for not more than 93 days or a fine of not more
27 than \$1,000.00, or both. Except for a knowing or intentional

1 release of false information, a psychiatric facility or other
2 facility defined in 42 USC 1396d(d) or staffing agency has no
3 liability in connection with a criminal history check conducted in
4 compliance with this section or the release of criminal history
5 record information under this subsection.

6 (10) Upon consent of an applicant as required in subsection
7 (3) and upon request from a psychiatric facility or other facility
8 defined in 42 USC 1396d(d) or staffing agency that has made a good-
9 faith offer of employment or an independent contract or clinical
10 privileges to the applicant, the relevant licensing or regulatory
11 department shall review the criminal history record information, if
12 any, and notify the requesting psychiatric facility or other
13 facility defined in 42 USC 1396d(d) or staffing agency of the
14 information in the manner prescribed in subsection (4). Until the
15 ~~federal bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION**
16 implements an automatic notification system similar to the system
17 required of the state police under subsection (13) and federal
18 regulations allow the federal criminal record to be used for
19 subsequent authorized uses, as determined in an order issued by the
20 department, a covered health or staffing agency facility may rely
21 on the criminal history record information provided by the relevant
22 licensing or regulatory department under this subsection and a
23 request to the ~~federal bureau of investigation~~ **FEDERAL BUREAU OF**
24 **INVESTIGATION** to make a subsequent determination of the existence
25 of any national criminal history pertaining to the applicant is not
26 necessary if all of the following requirements are met:

27 (a) The criminal history check was conducted during the

1 immediately preceding 12-month period.

2 (b) The applicant has been continuously employed by a
3 psychiatric facility or other facility defined in 42 USC 1396d(d),
4 covered health facility, or adult foster care facility or the
5 staffing agency since the criminal history check was conducted in
6 compliance with this section or meets the continuous employment
7 requirement of this subdivision other than being on layoff status
8 for less than 1 year from a psychiatric facility or other facility
9 defined in 42 USC 1396d(d), covered health facility, or adult
10 foster care facility.

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

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

18 (a) Agree in writing to report to the psychiatric facility or
19 other facility defined in 42 USC 1396d(d) or staffing agency
20 immediately upon being arraigned for 1 or more of the criminal
21 offenses listed in subsection (1)(a) ~~through~~ **TO** (g), upon being
22 convicted of 1 or more of the criminal offenses listed in
23 subsection (1)(a) ~~through~~ **TO** (g), upon becoming the subject of an
24 order or disposition described under subsection (1)(h), and upon
25 being the subject of a substantiated finding of neglect, abuse, or
26 misappropriation of property as described in subsection (1)(i).
27 Reporting of an arraignment under this subdivision is not cause for

1 termination or denial of employment.

2 (b) If a set of fingerprints is not already on file with the
3 department of state police, provide the department of state police
4 with a set of fingerprints.

5 (12) In addition to sanctions set forth in this act, a
6 licensee, owner, administrator, or operator of a psychiatric
7 facility or other facility defined in 42 USC 1396d(d) or staffing
8 agency who knowingly and willfully fails to conduct the criminal
9 history checks as required under this section is guilty of a
10 misdemeanor punishable by imprisonment for not more than 1 year or
11 a fine of not more than \$5,000.00, or both.

12 (13) In collaboration with the department of state police, the
13 department of technology, management, and budget shall establish
14 and maintain an automated fingerprint identification system
15 database that would allow the department of state police to store
16 and maintain all fingerprints submitted under this section and
17 would provide for an automatic notification if and when a
18 subsequent criminal arrest fingerprint card submitted into the
19 system matches a set of fingerprints previously submitted under
20 this section. Upon notification, the department of state police
21 shall immediately notify the department and the department shall
22 immediately contact each respective psychiatric facility or other
23 facility defined in 42 USC 1396d(d) or staffing agency with which
24 that individual is associated. Information in the database
25 established under this subsection is confidential, is not subject
26 to disclosure under the freedom of information act, 1976 PA 442,
27 MCL 15.231 to 15.246, and shall not be disclosed to any person

1 except for purposes of this act or for law enforcement purposes.

2 (14) The department shall maintain an electronic web-based
3 system to assist psychiatric facilities or other facility defined
4 in 42 USC 1396d(d) and staffing agencies required to check relevant
5 registries and conduct criminal history checks of its employees and
6 independent contractors, and individuals granted privileges and to
7 provide for an automated notice to those psychiatric facilities or
8 other facility defined in 42 USC 1396d(d) and staffing agencies for
9 those individuals inputted in the system who, since the initial
10 criminal history check, have been convicted of a disqualifying
11 offense or have been the subject of a substantiated finding of
12 abuse, neglect, or misappropriation of property. The department may
13 charge a staffing agency a 1-time set-up fee of up to \$100.00 for
14 access to the electronic web-based system under this section.

15 (15) As used in this section:

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

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

20 (i) For a crime that is not a relevant crime **DESCRIBED UNDER**
21 **42 USC 1320A-7(A)**, a final conviction, the payment of a fine, a
22 plea of guilty or nolo contendere if accepted by the court, or a
23 finding of guilt for a criminal law violation or a juvenile
24 adjudication or disposition by the juvenile division of probate
25 court or family division of circuit court for a violation that if
26 committed by an adult would be a crime.

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

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

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

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

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

16 (f) "Home health agency" means ~~a person certified by medicare~~
17 ~~whose business is to provide to individuals in their places of~~
18 ~~residence other than in a hospital, nursing home, or county medical~~
19 ~~care facility 1 or more of the following services: nursing~~
20 ~~services, therapeutic services, social work services, homemaker~~
21 ~~services, home health aide services, or other related services.~~ **THAT**
22 **TERM AS DEFINED IN SECTION 20173A OF THE PUBLIC HEALTH CODE, 1978**
23 **PA 368, MCL 333.20173A.**

24 (g) "Independent contract" means a contract entered into by a
25 health facility or agency with an individual who provides the
26 contracted services independently or a contract entered into by a
27 health facility or agency with a staffing agency that complies with

1 the requirements of this section to provide the contracted services
2 to the psychiatric facility or other facility defined in 42 USC
3 1396d(d) on behalf of the staffing agency.

4 ~~— (h) "Medicare" means benefits under the federal medicare~~
5 ~~program established under title XVIII of the social security act,~~
6 ~~42 USC 1395 to 1395kkk-1.~~

7 **(H)** ~~(i)~~ "Staffing agency" means an entity that recruits
8 candidates and provides temporary and permanent qualified staffing
9 for psychiatric facilities or other facility defined in 42 USC
10 1396d(d), including independent contractors.

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

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

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

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

23 (B) The tasks performed by the individual.

24 (C) The individual's work schedule.

25 (D) The supervision or evaluation of the individual's work or
26 job performance, including imposing discipline or granting
27 performance awards.

1 (E) The compensation the individual receives for performing
2 his or her duties.

3 (F) The conditions under which the individual performs his or
4 her duties.