

HOUSE BILL No. 6040

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

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 20173a (MCL 333.20173a), as amended by 2014 PA
66.

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

1 USC 1320a-7(a).

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

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

17 (ii) A felony involving cruelty or torture.

18 (iii) A felony under chapter XXA of the Michigan penal code,
19 1931 PA 328, MCL 750.145m to 750.145r.

20 (iv) A felony involving criminal sexual conduct.

21 (v) A felony involving abuse or neglect.

22 (vi) A felony involving the use of a firearm or dangerous
23 weapon.

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

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

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

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

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

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

21 (iii) A misdemeanor involving criminal sexual conduct.

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

24 (v) A misdemeanor involving abuse or neglect.

25 (e) Has been convicted of any of the following misdemeanors,
26 other than a misdemeanor for a relevant crime described under 42
27 USC 1320a-7(a), or a state or federal crime that is substantially

1 similar to the misdemeanors described in this subdivision, within
2 the 5 years immediately preceding the date of application for
3 employment or clinical privileges or the date of the execution of
4 the independent contract:

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

7 (ii) A misdemeanor involving home invasion.

8 (iii) A misdemeanor involving embezzlement.

9 (iv) A misdemeanor involving negligent homicide or a violation
10 of section 601d(1) of the Michigan vehicle code, 1949 PA 300, MCL
11 257.601d.

12 (v) A misdemeanor involving larceny unless otherwise provided
13 under subdivision (g).

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

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

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

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

1 bodily injury.

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

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

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

13 (i) A misdemeanor under part 74 if the individual, at the time
14 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 ~~pursuant to~~ **UNDER** an
24 investigation conducted in accordance with 42 USC 1395i-3 or 1396r.

25 (2) Except as otherwise provided in this subsection or
26 subsection (5), a covered facility shall not employ, independently
27 contract with, or grant privileges to an individual who regularly

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

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

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

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

13 (3) An individual who applies for employment either as an
14 employee or as an independent contractor or for clinical privileges
15 with a staffing agency or covered facility and who has not been the
16 subject of a criminal history check conducted in compliance with
17 this section shall give written consent at the time of application
18 for the department of state police to conduct a criminal history
19 check under this section, along with identification acceptable to
20 the department of state police. If the applicant has been the
21 subject of a criminal history check conducted in compliance with
22 this section, the applicant shall give written consent at the time
23 of application for the covered facility or staffing agency to
24 obtain the criminal history record information as prescribed in
25 subsection (4) from the relevant licensing or regulatory department
26 and for the department of state police to conduct a criminal
27 history check under this section if the requirements of subsection

(10) are not met and a request to the ~~federal bureau~~ **FEDERAL BUREAU** of ~~investigation~~ **INVESTIGATION** to make a determination of the existence of any national criminal history pertaining to the applicant is necessary, along with identification acceptable to the department of state police. Upon receipt of the written consent to obtain the criminal history record information and identification required under this subsection, the staffing agency or covered facility that has made a ~~good faith~~ **GOOD-FAITH** offer of employment or an independent contract or clinical privileges to the applicant shall request the criminal history record information from the relevant licensing or regulatory department and shall make a request regarding that applicant to the relevant licensing or regulatory department to conduct a check of all relevant registries in the manner required in subsection (4). If the requirements of subsection (10) are not met and a request to the ~~federal bureau~~ **FEDERAL BUREAU** of ~~investigation~~ **INVESTIGATION** to make a subsequent determination of the existence of any national criminal history pertaining to the applicant is necessary, the covered facility or staffing agency shall proceed in the manner required in subsection (4). A staffing agency that employs an individual who regularly has direct access to or provides direct services to patients or residents under an independent contract with a covered facility shall submit information regarding the criminal history check conducted by the staffing agency to the covered facility that has made a ~~good faith~~ **GOOD-FAITH** offer of independent contract to that applicant.

(4) Upon receipt of the written consent to conduct a criminal

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

1 ~~investigation~~ **INVESTIGATION** charges a fee for conducting the
2 criminal history check, the department shall pay the cost of or
3 reimburse the charge for a covered facility that is a home for the
4 aged. The staffing agency or covered facility shall not seek
5 reimbursement for a charge imposed by the department of state
6 police or the ~~federal bureau~~ **FEDERAL BUREAU** of investigation
7 **INVESTIGATION** from the individual who is the subject of the
8 criminal history check. A prospective employee or a prospective
9 independent contractor covered under this section may not be
10 charged for the cost of a criminal history check required under
11 this section. The department of state police shall conduct a
12 criminal history check on the applicant named in the request. The
13 department of state police shall provide the department with a
14 written report of the criminal history check conducted under this
15 subsection. The report shall contain any criminal history record
16 information on the applicant maintained by the department of state
17 police. The department of state police shall provide the results of
18 the ~~federal bureau~~ **FEDERAL BUREAU** of investigation **INVESTIGATION**
19 determination to the department within 30 days after the request is
20 made. If the requesting staffing agency or covered facility is not
21 a state department or agency and if criminal history record
22 information is disclosed on the written report of the criminal
23 history check or the ~~federal bureau~~ **FEDERAL BUREAU** of investigation
24 **INVESTIGATION** determination that resulted in a conviction, the
25 department shall notify the staffing agency or covered facility and
26 the applicant in writing of the type of crime disclosed on the
27 written report of the criminal history check or the ~~federal bureau~~

1 **FEDERAL BUREAU** of ~~investigation~~ **INVESTIGATION** determination without
2 disclosing the details of the crime. Any charges imposed by the
3 department of state police or the ~~federal bureau~~ **FEDERAL BUREAU** of
4 ~~investigation~~ **INVESTIGATION** for conducting a criminal history check
5 or making a determination under this subsection shall be paid in
6 the manner required under this subsection. The notice shall include
7 a statement that the applicant has a right to appeal the
8 information relied ~~upon~~ **ON** by the staffing agency or covered
9 facility in making its decision regarding his or her employment
10 eligibility based on the criminal history check. The notice shall
11 also include information regarding where to file and describing the
12 appellate procedures established under section 20173b.

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

19 (a) The covered facility requests the criminal history check
20 or criminal history record information under this section ~~upon~~ **ON**
21 conditionally employing or conditionally granting clinical
22 privileges to the individual.

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

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

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

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

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

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

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

1 basis under this subsection to have regular direct access to or
2 provide direct services to patients or residents in the covered
3 facility without supervision if all of the following conditions are
4 met:

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

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

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

24 (6) The department shall develop and distribute a model form
25 for the statements required under subsection (5)(b) and (c). The
26 department shall make the model form available to covered
27 facilities ~~upon~~ **ON** request at no charge.

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

8 (8) An individual who knowingly provides false information
9 regarding his or her identity, criminal convictions, or
10 substantiated findings on a statement described in subsection
11 (5) (b) (i) to (iii) is guilty of a misdemeanor punishable by
12 imprisonment for not more than 93 days or a fine of not more than
13 \$500.00, or both.

14 (9) A staffing agency or covered facility shall use criminal
15 history record information obtained under subsection (3) or (4)
16 only for the purpose of evaluating an applicant's qualifications
17 for employment, an independent contract, or clinical privileges in
18 the position for which he or she has applied and for the purposes
19 of subsections (5) and (7). A staffing agency or covered facility
20 or an employee of the staffing agency or covered facility shall not
21 disclose criminal history record information obtained under
22 subsection (3) or (4) to a person who is not directly involved in
23 evaluating the applicant's qualifications for employment, an
24 independent contract, or clinical privileges. An individual who
25 knowingly uses or disseminates the criminal history record
26 information obtained under subsection (3) or (4) in violation of
27 this subsection is guilty of a misdemeanor punishable by

1 imprisonment for not more than 93 days or a fine of not more than
2 \$1,000.00, or both. Except for a knowing or intentional release of
3 false information, a staffing agency or covered facility has no
4 liability in connection with a criminal history check conducted in
5 compliance with this section or the release of criminal history
6 record information under this subsection.

7 (10) Upon consent of an applicant as required in subsection
8 (3) and upon request from a staffing agency or covered facility
9 that has made a ~~good faith~~ **GOOD-FAITH** offer of employment or an
10 independent contract or clinical privileges to the applicant, the
11 relevant licensing or regulatory department shall review the
12 criminal history record information, if any, and notify the
13 requesting staffing agency or covered facility of the information
14 in the manner prescribed in subsection (4). Until the ~~federal~~
15 ~~bureau~~ **FEDERAL BUREAU** of ~~investigation~~ **INVESTIGATION** implements an
16 automatic notification system similar to the system required of the
17 state police under subsection (13) and federal regulations allow
18 the federal criminal record to be used for subsequent authorized
19 uses, as determined in an order issued by the department, a
20 staffing agency or covered facility may rely on the criminal
21 history record information provided by the relevant licensing or
22 regulatory department under this subsection and a request to the
23 ~~federal bureau~~ **FEDERAL BUREAU** of ~~investigation~~ **INVESTIGATION** to
24 make a subsequent determination of the existence of any national
25 criminal history pertaining to the applicant is not necessary if
26 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 the
3 staffing agency or a covered facility, adult foster care facility,
4 or mental health facility since the criminal history check was
5 conducted in compliance with this section or meets the continuous
6 employment requirement of this subdivision other than being on
7 layoff status for less than 1 year from a covered facility, adult
8 foster care facility, or mental health facility.

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

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

16 (a) Agree in writing to report to the staffing agency or
17 covered facility immediately upon being arraigned for 1 or more of
18 the criminal offenses listed in subsection (1)(a) to (g), upon
19 being convicted of 1 or more of the criminal offenses listed in
20 subsection (1)(a) to (g), upon becoming the subject of an order or
21 disposition described under subsection (1)(h), and upon being the
22 subject of a substantiated finding of neglect, abuse, or
23 misappropriation of property as described in subsection (1)(i).
24 Reporting of an arraignment under this subdivision is not cause for
25 termination or denial of employment.

26 (b) If a set of fingerprints is not already on file with the
27 department of state police, provide the department of state police

1 with a set of fingerprints.

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

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

25 (14) The department shall maintain an electronic web-based
26 system to assist staffing agencies and covered facilities required
27 to check relevant registries and conduct criminal history checks of

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

10 (15) As used in this section:

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

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

15 (i) For a crime that is not a relevant crime **DESCRIBED UNDER**
16 **42 USC 1320A-7(A)**, a final conviction, the payment of a fine, a
17 plea of guilty or nolo contendere if accepted by the court, or a
18 finding of guilt for a criminal law violation or a juvenile
19 adjudication or disposition by the juvenile division of probate
20 court or family division of circuit court for a violation that if
21 committed by an adult would be a crime.

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

24 (c) "Covered facility" means a health facility or agency that
25 is a nursing home, county medical care facility, hospice, hospital
26 that provides swing bed services, home for the aged, or home health
27 agency.

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

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

(f) "Home health agency" means a person ~~certified by medicare~~ whose business is to provide **SERVICES** to individuals in their places of residence other than in a hospital, nursing home, or county medical care facility ~~1 or more~~ **INCLUDING, BUT NOT LIMITED TO, ANY** of the following: ~~services: nursing~~

(i) **NURSING** services. ~~therapeutic~~

(ii) **THERAPEUTIC** services. ~~social~~

(iii) **SOCIAL** work services. ~~homemaker~~

(iv) **HOMEMAKER** services. ~~home~~

(v) **HOME** health aide services. ~~or other~~

(vi) **ASSISTANCE WITH ACTIVITIES OF DAILY LIVING.**

(vii) **COMPANION CARE SERVICES.**

(viii) **CUSTODIAL CARE SERVICES.**

(ix) **PRIVATE DUTY CARE SERVICES.**

(x) **CONTINENCE CARE SERVICES.**

(xi) **OTHER** related services.

(g) "Independent contract" means a contract entered into by a covered facility with an individual who provides the contracted

1 services independently or a contract entered into by a covered
 2 facility with a staffing agency that complies with the requirements
 3 of this section to provide the contracted services to the covered
 4 facility on behalf of the staffing agency.

5 ~~_____ (h) "Medicare" means benefits under the federal medicare~~
 6 ~~program established under title XVIII of the social security act,~~
 7 ~~42 USC 1395 to 1395kkk-1.~~

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

11 **(I)** ~~(j)~~ "Staffing agency" means an entity that recruits
 12 candidates and provides temporary and permanent qualified staffing
 13 for covered facilities, including independent contractors.

14 **(J)** ~~(k)~~ "Under the facility's control" means an individual
 15 employed by or under independent contract with a covered facility
 16 for whom the covered facility does both of the following:

17 (i) Determines whether the individual who has access to
 18 patients or residents may provide care, treatment, or other similar
 19 support service functions to patients or residents served by the
 20 covered facility.

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

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

24 (B) The tasks performed by the individual.

25 (C) The individual's work schedule.

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

1 performance awards.

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

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