

SENATE BILL No. 378

May 16, 2017, Introduced by Senators KNOLLENBERG, MACGREGOR, JONES, HUNE and KOWALL and referred to the Committee on Regulatory Reform.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 20106, 20156, 20173a, and 21311 (MCL 333.20106, 333.20156, 333.20173a, and 333.21311), section 20106 as amended by 2015 PA 104, section 20156 as amended by 2006 PA 195, section 20173a as amended by 2014 PA 66, and section 21311 as amended by 2004 PA 74, and by adding sections 21302 and 21311a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20106. (1) "Health facility or agency", except as
2 provided in section 20115, means:

3 (a) An ambulance operation, aircraft transport operation,
4 nontransport prehospital life support operation, or medical first
5 response service.

6 (b) A county medical care facility.

- 1 (c) A freestanding surgical outpatient facility.
2 (d) A health maintenance organization.
3 (e) A home for the aged.
4 (f) A hospital.
5 (g) A nursing home.
6 (h) A hospice.
7 (i) A hospice residence.
8 (j) A facility or agency listed in subdivisions (a) to (g)
9 located in a university, college, or other educational institution.

10 (2) "Health maintenance organization" means that term as
11 defined in section 3501 of the insurance code of 1956, 1956 PA 218,
12 MCL 500.3501.

13 (3) "Home for the aged" means a supervised personal care
14 facility **AT A SINGLE ADDRESS**, other than a hotel, adult foster care
15 facility, hospital, nursing home, or county medical care facility
16 that provides room, board, and supervised personal care to 21 or
17 more unrelated, nontransient, individuals ~~60~~55 years of age or
18 older. Home for the aged includes a supervised personal care
19 facility for 20 or fewer individuals ~~60~~55 years of age or older if
20 the facility is operated in conjunction with and as a distinct part
21 of a licensed nursing home. Home for the aged does not include an
22 area excluded from this definition by section 17(3) of the
23 continuing care community disclosure act, 2014 PA 448, MCL 554.917.

24 (4) "Hospice" means a health care program that provides a
25 coordinated set of services rendered at home or in outpatient or
26 institutional settings for individuals suffering from a disease or
27 condition with a terminal prognosis.

1 (5) "Hospital" means a facility offering inpatient, overnight
2 care, and services for observation, diagnosis, and active treatment
3 of an individual with a medical, surgical, obstetric, chronic, or
4 rehabilitative condition requiring the daily direction or
5 supervision of a physician. Hospital does not include a mental
6 health hospital licensed or operated by the department of ~~community~~
7 health **AND HUMAN SERVICES** or a hospital operated by the department
8 of corrections.

9 (6) "Hospital long-term care unit" means a nursing care
10 facility, owned and operated by and as part of a hospital,
11 providing organized nursing care and medical treatment to 7 or more
12 unrelated individuals suffering or recovering from illness, injury,
13 or infirmity.

14 Sec. 20156. (1) A representative of the department or the
15 bureau of fire services created in section 1b of the fire
16 prevention code, 1941 PA 207, MCL 29.1b, upon presentation of
17 proper identification, may enter the premises of an applicant or
18 licensee at any reasonable time to determine whether the applicant
19 or licensee meets the requirements of this article and the rules
20 promulgated under this article. The director; the director of the
21 department of **HEALTH AND** human services; the bureau of fire
22 services; the director of the office of services to the aging; or
23 the director of a local health department; or an authorized
24 representative of the director, the director of the department of
25 **HEALTH AND** human services, the bureau of fire services, the
26 director of the office of services to the aging, or the director of
27 a local health department may enter on the premises of an applicant

1 or licensee under part 217 at any time in the course of carrying
2 out program responsibilities.

3 (2) The bureau of fire services created in section 1b of the
4 fire prevention code, 1941 PA 207, MCL 29.1b, shall enforce rules
5 promulgated by the bureau of fire services for health facilities
6 and agencies to ~~assure~~**ENSURE** that physical facilities owned,
7 maintained, or operated by a health facility or agency are planned,
8 constructed, and maintained in a manner to protect the health,
9 safety, and welfare of patients.

10 (3) **BEGINNING ON THE EFFECTIVE DATE OF THE 2017 AMENDATORY ACT**
11 **THAT ADDED THIS SUBSECTION, THE BUREAU OF FIRE SERVICES SHALL AMEND**
12 **THE RULES PROMULGATED UNDER SUBSECTION (3) TO ALLOW PHYSICAL**
13 **FACILITIES IN EXISTENCE ON OR BEFORE DECEMBER 31, 2016 AND**
14 **CONTINUOUSLY OPERATING UP TO THE TIME OF APPLICATION FOR A HOME FOR**
15 **THE AGED LICENSE TO BE REVIEWED AND INSPECTED TO COMPLY WITH THE**
16 **PROVISIONS OF CHAPTER 19 OR 33 OF THE NATIONAL FIRE PROTECTION**
17 **ASSOCIATION STANDARD NUMBER 101. CHAPTER 33 OF THE NATIONAL FIRE**
18 **PROTECTION ASSOCIATION STANDARD NUMBER 101 ONLY APPLIES IF**
19 **RESIDENTS ARE ASSESSED AS CAPABLE OF SELF-PRESERVATION OR THE**
20 **PHYSICAL FACILITY IS ADEQUATELY STAFFED TO EVACUATE RESIDENTS IN AN**
21 **EMERGENCY.**

22 (4) **AN APPLICANT UNDER SUBSECTION (3) SHALL PROVIDE**
23 **INFORMATION REQUESTED BY THE DEPARTMENT THAT ALLOWS THE DEPARTMENT**
24 **TO VERIFY THAT THE PHYSICAL FACILITY WAS IN EXISTENCE ON OR BEFORE**
25 **DECEMBER 31, 2016 AND HAS BEEN CONTINUOUSLY OPERATING UP TO THE**
26 **TIME OF APPLICATION.**

27 (5) ~~(3)~~The department shall not issue a license or

1 certificate to a health facility or agency until it receives an
2 appropriate certificate of approval from the bureau of fire
3 services. For purposes of this section, a decision of the bureau of
4 fire services to issue a certificate controls over that of a local
5 fire department.

6 (6) ~~(4)~~—Subsections (2), ~~and (3)~~, (4), **AND (5)** do not apply to
7 a health facility or an agency licensed under part 205 or 209.

8 Sec. 20173a. (1) Except as otherwise provided in subsection
9 (2), a covered facility shall not employ, independently contract
10 with, or grant clinical privileges to an individual who regularly
11 has direct access to or provides direct services to patients or
12 residents in the covered facility if the individual satisfies 1 or
13 more of the following:

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

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

26 (i) A felony that involves the intent to cause death or
27 serious impairment of a body function, that results in death or

1 serious impairment of a body function, that involves the use of
2 force or violence, or that involves the threat of the use of force
3 or violence.

4 (ii) A felony involving cruelty or torture.

5 (iii) A felony under chapter XXA of the Michigan penal code,
6 1931 PA 328, MCL 750.145m to 750.145r.

7 (iv) A felony involving criminal sexual conduct.

8 (v) A felony involving abuse or neglect.

9 (vi) A felony involving the use of a firearm or dangerous
10 weapon.

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

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

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

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

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

8 (iii) A misdemeanor involving criminal sexual conduct.

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

11 (v) A misdemeanor involving abuse or neglect.

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

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

21 (ii) A misdemeanor involving home invasion.

22 (iii) A misdemeanor involving embezzlement.

23 (iv) A misdemeanor involving negligent homicide or a violation
24 of section 601d(1) of the Michigan vehicle code, 1949 PA 300, MCL
25 257.601d.

26 (v) A misdemeanor involving larceny unless otherwise provided
27 under subdivision (g).

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

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

6 (f) 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 3 years 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 for assault if there was no use of a firearm
14 or dangerous weapon and no intent to commit murder or inflict great
15 bodily injury.

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

18 (iii) A misdemeanor under part 74 unless otherwise provided
19 under subdivision (g).

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

27 (i) A misdemeanor under part 74 if the individual, at the time

1 of conviction, is under the age of 18.

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

5 (h) Is the subject of an order or disposition under section
6 16b of chapter IX of the code of criminal procedure, 1927 PA 175,
7 MCL 769.16b.

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

12 (2) Except as otherwise provided in this subsection or
13 subsection (5), a covered facility shall not employ, independently
14 contract with, or grant privileges to an individual who regularly
15 has direct access to or provides direct services to patients or
16 residents in the covered facility until the covered facility or
17 staffing agency has a criminal history check conducted in
18 compliance with this section or has received criminal history
19 record information in compliance with subsections (3) and (10).
20 This subsection and subsection (1) do not apply to any of the
21 following:

22 (a) An individual who is employed by, under independent
23 contract to, or granted clinical privileges in a covered facility
24 before April 1, 2006. On or before April 1, 2011, an individual who
25 is exempt under this subdivision and who has not been the subject
26 of a criminal history check conducted in compliance with this
27 section shall provide the department of state police with a set of

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

17 (b) An individual who is under an independent contract with a
18 covered facility if he or she is not under the facility's control
19 and the services for which he or she is contracted are not directly
20 related to the provision of services to a patient or resident or if
21 the services for which he or she is contracted allow for direct
22 access to the patients or residents but are not performed on an
23 ongoing basis. This exception includes, but is not limited to, an
24 individual who is under an independent contract with the covered
25 facility to provide utility, maintenance, construction, or
26 communications services.

27 (3) An individual who applies for employment either as an

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

1 in the manner required in subsection (4). If the requirements of
2 subsection (10) are not met and a request to the ~~federal bureau of~~
3 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** to make a subsequent
4 determination of the existence of any national criminal history
5 pertaining to the applicant is necessary, the covered facility or
6 staffing agency shall proceed in the manner required in subsection
7 (4). A staffing agency that employs an individual who regularly has
8 direct access to or provides direct services to patients or
9 residents under an independent contract with a covered facility
10 shall submit information regarding the criminal history check
11 conducted by the staffing agency to the covered facility that has
12 made a good faith offer of independent contract to that applicant.

13 (4) Upon receipt of the written consent to conduct a criminal
14 history check and identification required under subsection (3), a
15 staffing agency or covered facility that has made a good faith
16 offer of employment or an independent contract or clinical
17 privileges to the applicant shall make a request to the department
18 of state police to conduct a criminal history check on the
19 applicant, to input the applicant's fingerprints into the automated
20 fingerprint identification system database, and to forward the
21 applicant's fingerprints to the ~~federal bureau of~~
22 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION**. The department of
23 state police shall request the ~~federal bureau of investigation~~
24 **FEDERAL BUREAU OF INVESTIGATION** to make a determination of the
25 existence of any national criminal history pertaining to the
26 applicant. The applicant shall provide the department of state
27 police with a set of fingerprints. The request shall be made in a

1 manner prescribed by the department of state police. The staffing
2 agency or covered facility shall make the written consent and
3 identification available to the department of state police. The
4 staffing agency or covered facility shall make a request regarding
5 that applicant to the relevant licensing or regulatory department
6 to conduct a check of all relevant registries established pursuant
7 **ACCORDING** to federal and state law and regulations for any
8 substantiated findings of abuse, neglect, or misappropriation of
9 property. If the department of state police or the ~~federal bureau~~
10 ~~of investigation~~ **FEDERAL BUREAU OF INVESTIGATION** charges a fee for
11 conducting the criminal history check, the staffing agency or
12 covered facility shall pay the cost of the charge. If the
13 department of state police or the ~~federal bureau of investigation~~
14 **FEDERAL BUREAU OF INVESTIGATION** charges a fee for conducting the
15 criminal history check, the department shall pay the cost of ~~or~~
16 ~~reimburse~~ the charge **UP TO 40 CRIMINAL HISTORY CHECKS PER YEAR** for
17 a covered facility that is a home for the aged **WITH FEWER THAN 100**
18 **BEDS AND 50 CRIMINAL HISTORY CHECKS PER YEAR FOR A COVERED FACILITY**
19 **THAT IS A HOME FOR THE AGED WITH 100 BEDS OR MORE**. The staffing
20 agency or covered facility shall not seek reimbursement for a
21 charge imposed by the department of state police or the ~~federal~~
22 ~~bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION** from the
23 individual who is the subject of the criminal history check. A
24 prospective employee or a prospective independent contractor
25 covered under this section may not be charged for the cost of a
26 criminal history check required under this section. The department
27 of state police shall conduct a criminal history check on the

1 applicant named in the request. The department of state police
2 shall provide the department with a written report of the criminal
3 history check conducted under this subsection. The report shall
4 contain any criminal history record information on the applicant
5 maintained by the department of state police. The department of
6 state police shall provide the results of the ~~federal bureau of~~
7 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** determination to the
8 department within 30 days after the request is made. If the
9 requesting staffing agency or covered facility is not a state
10 department or agency and if criminal history record information is
11 disclosed on the written report of the criminal history check or
12 the ~~federal bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION**
13 determination that resulted in a conviction, the department shall
14 notify the staffing agency or covered facility and the applicant in
15 writing of the type of crime disclosed on the written report of the
16 criminal history check or the ~~federal bureau of investigation~~
17 **FEDERAL BUREAU OF INVESTIGATION** determination without disclosing
18 the details of the crime. Any charges imposed by the department of
19 state police or the ~~federal bureau of investigation~~ **FEDERAL BUREAU**
20 **OF INVESTIGATION** for conducting a criminal history check or making
21 a determination under this subsection shall be paid in the manner
22 required under this subsection. The notice shall include a
23 statement that the applicant has a right to appeal the information
24 relied upon by the staffing agency or covered facility in making
25 its decision regarding his or her employment eligibility based on
26 the criminal history check. The notice shall also include
27 information regarding where to file and describing the appellate

1 procedures established under section 20173b.

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

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

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

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

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

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

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

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

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

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

1 direct access to or provide direct services to patients or
2 residents under this section.

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

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

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

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

24 (8) An individual who knowingly provides false information
25 regarding his or her identity, criminal convictions, or
26 substantiated findings on a statement described in subsection
27 (5) (b) (i) to (iii) is guilty of a misdemeanor punishable by

1 imprisonment for not more than 93 days or a fine of not more than
2 \$500.00, or both.

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

23 (10) Upon consent of an applicant as required in subsection
24 (3) and upon request from a staffing agency or covered facility
25 that has made a good faith offer of employment or an independent
26 contract or clinical privileges to the applicant, the relevant
27 licensing or regulatory department shall review the criminal

1 history record information, if any, and notify the requesting
2 staffing agency or covered facility of the information in the
3 manner prescribed in subsection (4). Until the ~~federal bureau of~~
4 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** implements an
5 automatic notification system similar to the system required of the
6 state police under subsection (13) and federal regulations allow
7 the federal criminal record to be used for subsequent authorized
8 uses, as determined in an order issued by the department, a
9 staffing agency or covered facility may rely on the criminal
10 history record information provided by the relevant licensing or
11 regulatory department under this subsection and a request to the
12 ~~federal bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION** to
13 make a subsequent determination of the existence of any national
14 criminal history pertaining to the applicant is not necessary if
15 all of the following requirements are met:

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

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

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

1 period.

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

5 (a) Agree in writing to report to the staffing agency or
6 covered facility immediately upon being arraigned for 1 or more of
7 the criminal offenses listed in subsection (1)(a) to (g), upon
8 being convicted of 1 or more of the criminal offenses listed in
9 subsection (1)(a) to (g), upon becoming the subject of an order or
10 disposition described under subsection (1)(h), and upon being the
11 subject of a substantiated finding of neglect, abuse, or
12 misappropriation of property as described in subsection (1)(i).
13 Reporting of an arraignment under this subdivision is not cause for
14 termination or denial of employment.

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

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

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

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

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

26 (15) As used in this section:

27 (a) "Adult foster care facility" means an adult foster care

1 facility licensed under the adult foster care facility licensing
2 act, 1979 PA 218, MCL 400.701 to 400.737.

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

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

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

13 (c) "Covered facility" means a health facility or agency that
14 is a nursing home, county medical care facility, hospice, hospital
15 that provides swing bed services, home for the aged, or home health
16 agency.

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

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

26 (f) "Home health agency" means a person certified by medicare
27 whose business is to provide to individuals in their places of

1 residence other than in a hospital, nursing home, or county medical
2 care facility 1 or more of the following services: nursing
3 services, therapeutic services, social work services, homemaker
4 services, home health aide services, or other related services.

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

11 (h) "Medicare" means benefits under the federal medicare
12 program established under title XVIII of the social security act,
13 42 USC 1395 to ~~1395kkk-1~~ **1395lll**.

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

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

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

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

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

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

3 (B) The tasks performed by the individual.

4 (C) The individual's work schedule.

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

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

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

12 **SEC. 21302. (1) "CONTINUING CARE COMMUNITY" MEANS THAT TERM AS**
13 **DEFINED IN SECTION 3 OF THE CONTINUING CARE COMMUNITY DISCLOSURE**
14 **ACT, 2014 PA 448, MCL 554.903.**

15 **(2) "SUPERVISED PERSONAL CARE" MEANS THE DIRECT GUIDANCE OR**
16 **HANDS-ON ASSISTANCE WITH ACTIVITIES OF DAILY LIVING OFFERED BY A**
17 **FACILITY TO RESIDENTS OF THE FACILITY THAT INCLUDE 2 OR MORE OF THE**
18 **FOLLOWING SERVICES PROVIDED BY THE FACILITY TO ANY RESIDENT FOR 30**
19 **OR MORE CONSECUTIVE DAYS AS DOCUMENTED IN THE RESIDENT'S SERVICE**
20 **PLAN:**

21 **(A) DIRECT AND REGULAR INVOLVEMENT BY STAFF IN ASSISTING A**
22 **RESIDENT WITH THE ADMINISTRATION OF THE RESIDENT'S PRESCRIPTION**
23 **MEDICATIONS, INCLUDING DIRECT SUPERVISION OF THE RESIDENT TAKING**
24 **MEDICATION IN ACCORDANCE WITH THE INSTRUCTIONS OF THE RESIDENT'S**
25 **LICENSED HEALTH CARE PROFESSIONAL.**

26 **(B) HANDS-ON ASSISTANCE BY STAFF IN CARRYING OUT 2 OR MORE OF**
27 **THE FOLLOWING ACTIVITIES OF DAILY LIVING: EATING, TOILETING,**

1 BATHING, GROOMING, DRESSING, TRANSFERRING, AND MOBILITY.

2 (C) DIRECT STAFF INVOLVEMENT IN A RESIDENT'S PERSONAL AND
3 SOCIAL ACTIVITIES OR THE USE OF DEVICES TO ENHANCE RESIDENT SAFETY
4 BY CONTROLLING RESIDENT EGRESS FROM THE FACILITY.

5 Sec. 21311. (1) ~~A~~—EXCEPT AS PROVIDED IN SECTION 21311A, A home
6 for the aged shall be licensed under this article.

7 (2) ~~"Home~~—EXCEPT AS PROVIDED IN SECTION 21311A, "HOME for the
8 aged" or a similar term or abbreviation shall not be used to
9 describe or refer to a health facility or agency unless the health
10 facility or agency is licensed as a home for the aged by the
11 department under this article.

12 (3) Except as otherwise provided in this subsection, a home
13 for the aged shall not admit an individual under ~~60~~—55 years of
14 age. Upon the request of a home for the aged and subject to
15 subsection (4), the director shall waive the age limitation imposed
16 by this subsection if the individual, the individual's guardian or
17 other legal representative, if appointed, and the owner, operator,
18 and governing body of the home for the aged, upon consultation with
19 the individual's physician, agree on each of the following:

20 (a) The home for the aged is capable of meeting all of the
21 individual's medical, social, and other needs as determined in the
22 individual's plan of service.

23 (b) The individual will be compatible with the other residents
24 of that home for the aged.

25 (c) The placement in that home for the aged is in the best
26 interests of the individual.

27 (4) The owner, operator, and governing body of the home for

1 the aged shall submit, with its request for a waiver, documentation
2 to the director that supports each of the points of agreement
3 necessary under subsection (3). Within 5 days after receipt of the
4 information required under this subsection, the director shall
5 determine if that documentation collectively substantiates each of
6 the points of agreement necessary under subsection (3) and approve
7 or deny the waiver. If denied, the director shall send a written
8 notice of the denial and the reasons for denial to the requesting
9 party.

10 SEC. 21311A. (1) THE DEPARTMENT SHALL MAKE A DETERMINATION
11 THAT A FACILITY IS EXEMPT FROM LICENSURE AS A HOME FOR THE AGED
12 UNDER THIS ARTICLE IF THE OWNER, OPERATOR, OR GOVERNING BODY OF THE
13 FACILITY SUBMITS AN ATTESTATION TO THE DEPARTMENT THAT ASSURES
14 EITHER OF THE FOLLOWING:

15 (A) ALL OF THE FOLLOWING REQUIREMENTS ARE MET:

16 (i) THE OWNER, OPERATOR, OR GOVERNING BODY THAT PROVIDES ROOM
17 AND THE PERSON THAT PROVIDES SUPERVISED PERSONAL CARE ARE NOT
18 RELATED.

19 (ii) THE INDIVIDUAL HAS THE RIGHT TO CONTRACT FOR SUPERVISED
20 PERSONAL CARE FROM A PERSON OF HIS OR HER CHOICE.

21 (iii) THE ATTESTATION MUST BE PROVIDED BY THE OWNER OR
22 MANAGING COMPANY THAT CERTIFIES THAT THE PERSONS DESCRIBED IN
23 SUBPARAGRAPH (i) ARE NOT RELATED.

24 (iv) THE APPLICANT ACKNOWLEDGES THAT THE PENALTY FOR
25 SUBMITTING A FALSE OR INACCURATE ATTESTATION IS AN ADMINISTRATIVE
26 FINE OF \$10,000.00.

27 (B) BOTH OF THE FOLLOWING REQUIREMENTS ARE MET:

1 (i) THE ENTITY THAT PROVIDES ROOM AND THE ENTITY THAT PROVIDES
2 SUPERVISED PERSONAL CARE ARE RELATED, AND THE FACILITY IS
3 REGISTERED AS A CONTINUING CARE COMMUNITY UNDER THE CONTINUING CARE
4 COMMUNITY DISCLOSURE ACT, 2014 PA 448, MCL 554.901 TO 554.993, AND
5 THAT INCLUDES A LICENSED NURSING HOME AS PART OF THE CONTINUING
6 CARE COMMUNITY.

7 (ii) THE APPLICANT ACKNOWLEDGES THAT THE PENALTY FOR
8 SUBMITTING A FALSE OR INACCURATE ATTESTATION IS AN ADMINISTRATIVE
9 FINE OF \$10,000.00.

10 (2) BEGINNING ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
11 ADDED THIS SECTION, AN EXEMPTION FROM LICENSING ALLOWED UNDER THIS
12 SECTION MAY BE GIVEN TO AN EXISTING FACILITY OR A FACILITY UNDER
13 CONSTRUCTION AT WHICH BOARD IS OFFERED THROUGH A PERSON NOT RELATED
14 TO THE PERSON THAT PROVIDES ROOM OR SUPERVISED PERSONAL CARE, OR
15 BOTH, IF THAT FACILITY MEETS THE REQUIREMENTS OF THIS SECTION. AN
16 EXEMPTION GRANTED UNDER THIS SECTION NO LONGER APPLIES AFTER A
17 MAJOR BUILDING MODIFICATION IS MADE TO THE FACILITY. AN EXEMPTION
18 SHALL NOT BE GRANTED UNDER THIS SUBSECTION AFTER DECEMBER 31, 2019.

19 (3) A DENIAL OF AN EXEMPTION FROM THE LICENSING REQUIREMENT BY
20 THE DEPARTMENT IS SUBJECT TO A REVIEW BY THE DEPARTMENT UPON THE
21 APPLICANT PROVIDING FURTHER INFORMATION OR AN APPEAL AS PROVIDED IN
22 SECTION 1205, OR BOTH. THE DEPARTMENT SHALL ACT ON AN EXEMPTION
23 REQUESTED UNDER THIS SECTION AS SOON AS PRACTICABLE BUT NO LATER
24 THAN 60 DAYS AFTER RECEIPT OF THE REQUEST FOR EXEMPTION.

25 (4) AN EXEMPTION GRANTED UNDER SUBSECTION (1) OR (2) MAY BE
26 REVOKED IF THE DEPARTMENT DETERMINES 1 OF THE FOLLOWING:

27 (A) THAT THE FALSE OR INACCURATE INFORMATION PROVIDED IN THE

1 ATTESTATION WAS MATERIAL TO GRANTING THE EXEMPTION.

2 (B) THE FACILITY IS FOUND TO BE NEGLIGENT IN THE SERIOUS
3 INJURY OR DEATH OF A RESIDENT AND THERE CONTINUES TO BE A RISK TO
4 THE HEALTH AND SAFETY OF THE RESIDENTS AT THAT FACILITY.

5 (C) THE FACILITY DOES NOT COOPERATE IN THE DEPARTMENT'S
6 INVESTIGATION TO MAKE A DETERMINATION FOR SUBDIVISION (A) OR (B).

7 (5) AS USED IN THIS SECTION:

8 (A) "BOARD" MEANS FOOD SERVICE PROVIDED AT A FACILITY.

9 (B) "RELATED" MEANS ANY OF THE FOLLOWING PERSONAL
10 RELATIONSHIPS BY MARRIAGE, BLOOD, OR ADOPTION: SPOUSE, CHILD,
11 PARENT, BROTHER, SISTER, GRANDPARENT, GRANDCHILD, AUNT, UNCLE,
12 STEPPARENT, STEPBROTHER, STEPSISTER, OR COUSIN. RELATED ALSO MEANS
13 AN ENTITY OWNS OR IS OWNED BY ANY PERSON THAT HAS A DIRECT OR
14 INDIRECT OWNERSHIP INTEREST IN ANY OTHER ENTITY THAT PROVIDES A
15 COMPONENT OF OPERATIONS OR SERVICE UNDER SUBSECTION (1) (A) (i).

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