

**SUBSTITUTE FOR
HOUSE BILL NO. 4257**

A bill to amend 1979 PA 218, entitled
"Adult foster care facility licensing act,"
by amending sections 13, 31, and 34b (MCL 400.713, 400.731, and
400.734b), section 13 as amended by 2018 PA 557, section 31 as
amended by 1994 PA 150, and section 34b as amended by 2018 PA 558.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 13. (1) A person, partnership, corporation, association,
2 or a department or agency of the state, county, city, or other
3 political subdivision shall not establish or maintain an adult
4 foster care facility unless licensed by the department.

5 (2) Application for a license ~~shall~~**must** be made on forms
6 provided and in the manner prescribed by the department. The
7 application ~~shall~~**must** be accompanied by the fee prescribed in



1 section 13a.

2 (3) Before issuing or renewing a license, the department shall
3 investigate the activities and standards of care of the applicant
4 and shall make an on-site evaluation of the facility. On-site
5 inspections conducted in response to the application may be
6 conducted without prior notice to the applicant. On-site
7 inspections conducted for renewing a license may be conducted
8 within 12 months before the expiration date of the current license
9 without impact on the license renewal date or the license fee.

10 Subject to subsections (9), (10), and (11), the department shall
11 issue or renew a license if satisfied as to all of the following:

12 (a) The financial stability of the facility.

13 (b) The applicant's compliance with this act and rules
14 promulgated under this act.

15 (c) The good moral character of the applicant, or owners,
16 partners, or directors of the facility, if other than an
17 individual. Each of these persons ~~shall~~**must** be not less than 18
18 years of age.

19 (d) The physical and emotional ability of the applicant, and
20 the person responsible for the daily operation of the facility to
21 operate an adult foster care facility.

22 (e) The good moral character of the licensee or licensee
23 designee, owner, partner, director, and person responsible for the
24 daily operation of the facility. The applicant is responsible for
25 assessing the good moral character of the employees of the
26 facility. The person responsible for the daily operation of the
27 facility ~~shall~~**must** be not less than 18 years of age.

28 (4) The department shall require an applicant or a licensee to
29 disclose the names, addresses, and official positions of all



1 persons who have an ownership interest in the adult foster care
2 facility. If the adult foster care facility is located on or in
3 real estate that is leased, the applicant or licensee shall
4 disclose the name of the lessor of the real estate and any direct
5 or indirect interest that the applicant or licensee has in the
6 lease other than as lessee.

7 (5) Each license shall state the maximum number of persons to
8 be received for foster care at 1 time.

9 (6) If applicable, a license shall state the type of
10 specialized program for which certification has been received from
11 the department.

12 (7) A license ~~shall~~**must** be issued to a specific person for a
13 facility at a specific location and is nontransferable.

14 (8) An applicant or licensee proposing a sale of an adult
15 foster care facility or home to another owner shall provide the
16 department with advance notice of the proposed sale in writing. The
17 applicant or licensee and other parties to the sale shall arrange
18 to meet with specified department representatives and shall obtain
19 before the sale a determination of the items of noncompliance with
20 applicable law and rules that ~~shall~~**must** be corrected. The
21 department shall notify the respective parties of the items of
22 noncompliance before the change of ownership, shall indicate that
23 the items of noncompliance ~~shall~~**must** be corrected as a condition
24 of issuance of a license to the new owner, and shall notify the
25 prospective purchaser of all licensure requirements.

26 (9) The department shall not issue a license to or renew the
27 license of an owner, partner, or director of the applicant, who has
28 regular direct access to residents or who has on-site facility
29 operational responsibilities, or an applicant or the licensee



1 designee, if any of those individuals have been convicted of 1 or
2 more of the following:

3 (a) A felony under this act or under chapter XXA of the
4 Michigan penal code, 1931 PA 328, MCL 750.145m to
5 ~~750.145r~~. **750.145s**.

6 (b) A misdemeanor under this act or under chapter XXA of the
7 Michigan penal code, 1931 PA 328, MCL 750.145m to ~~750.145r~~,
8 **750.145s**, within the 10 years immediately preceding the
9 application.

10 (c) A misdemeanor involving abuse, neglect, assault, battery,
11 or criminal sexual conduct or involving fraud or theft against a
12 vulnerable adult as that term is defined in section 145m of the
13 Michigan penal code, 1931 PA 328, MCL 750.145m, or a state or
14 federal crime that is substantially similar to a misdemeanor
15 described in this subdivision within the 10 years immediately
16 preceding the application.

17 (10) If the department has revoked, suspended, or refused to
18 renew a person's license, or denied an application for a license,
19 for an adult foster care facility according to section 22, the
20 department may refuse to issue a license to or renew a license of
21 that person for a period of 5 years after the suspension,
22 revocation, or nonrenewal of the license, or denial of the
23 application.

24 (11) The department may refuse to issue a license to or renew
25 the license of an applicant if the department determines that the
26 applicant has a relationship with a former licensee whose license
27 under this act has been suspended, revoked, or nonrenewed under
28 subsection (9) or section 22 or a convicted person to whom a
29 license has been denied under subsection (9). This subsection



1 applies for 5 years after the suspension, revocation, or nonrenewal
2 of the former licensee's license or the denial of the convicted
3 person's license. For purposes of this subsection, an applicant has
4 a relationship with a former licensee or convicted person if the
5 former licensee or convicted person is involved with the facility
6 in 1 or more of the following ways:

7 (a) Participates in the administration or operation of the
8 facility.

9 (b) Has a financial interest in the operation of the facility.

10 (c) Provides care to residents of the facility.

11 (d) Has contact with residents or staff on the premises of the
12 facility.

13 (e) Is employed by the facility.

14 (f) Resides in the facility.

15 (12) If the department determines that an unlicensed facility
16 is an adult foster care facility, the department shall notify the
17 owner or operator of the facility that it is required to be
18 licensed under this act. A person receiving the notification
19 required under this section who does not apply for a license within
20 30 days is subject to the penalties described in subsection (13).

21 (13) Subject to subsection (12), a person who violates
22 subsection (1) is guilty of a misdemeanor, punishable by
23 imprisonment for not more than 2 years or a fine of not more than
24 \$50,000.00, or both. A person who has been convicted of a violation
25 of subsection (1) who commits a second or subsequent violation is
26 guilty of a felony, punishable by imprisonment for not more than 5
27 years or a fine of not more than \$75,000.00, or both.

28 (14) The department shall issue an initial or renewal license
29 not later than 6 months after the applicant files a completed



1 application. Receipt of the application is considered the date the
2 application is received by an agency or department of this state.
3 If the application is considered incomplete by the department, the
4 department shall notify the applicant in writing or make notice
5 electronically available within 30 days after receipt of the
6 incomplete application, describing the deficiency and requesting
7 additional information. If the department identifies a deficiency
8 or requires the fulfillment of a corrective action plan, the 6-
9 month period is tolled until either of the following occurs:

10 (a) Upon notification by the department of a deficiency, until
11 the date the requested information is received by the department.

12 (b) Upon notification by the department that a corrective
13 action plan is required, until the date the department determines
14 the requirements of the corrective action plan have been met.

15 (15) The determination of the completeness of an application
16 does not operate as an approval of the application for the license
17 and does not confer eligibility of an applicant determined
18 otherwise ineligible for issuance of a license.

19 (16) If the department fails to issue or deny a license within
20 the time required by this section, the department shall return the
21 license fee and shall reduce the license fee for the applicant's
22 next renewal application, if any, by 15%. Failure to issue or deny
23 a license within the time period required under this section does
24 not allow the department to otherwise delay processing an
25 application. The completed application ~~shall~~**must** be placed in
26 sequence with other completed applications received at that same
27 time. The department shall not discriminate against an applicant in
28 the processing of an application based on the fact that the
29 application fee was refunded or discounted under this subsection.



1 (17) If, on a continual basis, inspections performed by a
2 local health department delay the department in issuing or denying
3 licenses under this act within the 6-month period, the department
4 may use department staff to complete the inspections instead of the
5 local health department causing the delays.

6 (18) The department director shall submit a report by December
7 1 of each year to the standing committees and appropriations
8 subcommittees of the senate and house of representatives concerned
9 with human services issues. The department director shall include
10 all of the following information in the report concerning the
11 preceding fiscal year:

12 (a) The number of initial and renewal applications the
13 department received and completed within the 6-month time period
14 described in subsection (14).

15 (b) The number of applications requiring a request for
16 additional information.

17 (c) The number of applications rejected.

18 (d) The number of licenses not issued within the 6-month
19 period.

20 (e) The average processing time for initial and renewal
21 licenses granted after the 6-month period.

22 (19) An applicant, if an individual, or an owner, partner, or
23 director of the applicant who has regular direct access to
24 residents or who has on-site facility operational responsibilities
25 shall give written consent at the time of original license
26 application and a licensee designee shall give written consent at
27 the time of appointment for the department of state police to
28 conduct both of the following:

29 (a) A criminal history check.



1 (b) A criminal records check through the Federal Bureau of
2 Investigation.

3 (20) An owner, partner, or director of the applicant who has
4 regular direct access to residents or who has on-site facility
5 operational responsibilities is exempt from the requirements of
6 subsection (19) if he or she has already submitted consent
7 described in subsection (19) and were continuously affiliated with
8 a licensed adult foster care facility as an applicant, owner,
9 partner, or director.

10 (21) The department shall require the applicant, if an
11 individual, the licensee designee, owner, partner, or director of
12 the applicant who has regular direct access to residents or who has
13 on-site facility operational responsibilities to submit his or her
14 fingerprints to the department of state police for the criminal
15 history check and criminal records check described in subsection
16 (19).

17 (22) The department shall request a criminal history check and
18 criminal records check required under this section in the manner
19 prescribed by the department of state police. The department of
20 state police shall conduct the criminal history check and provide a
21 report of the results to the licensing or regulatory bureau of the
22 department. The report shall contain any criminal history
23 information on the person maintained by the department of state
24 police and the results of the criminal records check from the
25 Federal Bureau of Investigation. The department of state police may
26 charge the person on whom the criminal history check and criminal
27 records check are performed under this section a fee that does not
28 exceed the actual and reasonable cost of conducting the checks.

29 (23) Beginning March 13, 2012, if an applicant or licensee



1 designee or person described in subsection (20) applies for a
2 license or to renew a license to operate an adult foster care
3 facility and he or she or the licensee designee previously
4 underwent a criminal history check and criminal records check
5 required under subsection (19) or under section 134a of the mental
6 health code, 1974 PA 258, MCL 330.1134a, and has remained
7 continuously licensed or continuously employed under section 34b or
8 under section 20173a of the public health code, 1978 PA 368, MCL
9 333.20173a, after the criminal history check and criminal records
10 check have been performed, that person is not required to submit to
11 another criminal history check or criminal records check upon
12 renewal of the license obtained under subsection (3).

13 (24) The department of state police shall store and maintain
14 all fingerprints submitted under this act in an automated
15 fingerprint identification system database that provides for an
16 automatic notification at the time of a subsequent criminal arrest
17 fingerprint card submitted into the system that matches a set of
18 fingerprints previously submitted in accordance with this act. Upon
19 notification, the department of state police shall immediately
20 notify the department and the department shall take the appropriate
21 action.

22 (25) A licensee, licensee designee, owner, partner, or
23 director of the licensee ~~shall~~**must** not be permitted on the
24 premises of an adult foster care facility or have direct access to
25 residents or resident records if he or she has been convicted of
26 any of the following: adult abuse, neglect, or financial
27 exploitation; or listed offenses as defined in section 2 of the sex
28 offenders registration act, 1994 PA 295, MCL 28.722.

29 (26) An adult foster family care home or an adult foster care



1 group home ~~shall~~**must** not be concurrently licensed as a group child
2 care home or a family child care home.

3 (27) As used in this section, "completed application" means an
4 application complete on its face with all requested information
5 provided and answers to all questions provided and submitted with
6 any applicable licensing fees as well as any other information,
7 records, approval, security, or similar item required by law or
8 rule from a local unit of government, a federal agency, or a
9 private entity but not from another department or agency of this
10 state. A completed application does not include a health inspection
11 performed by a local health department.

12 Sec. 31. (1) Except as otherwise provided in section 13 or
13 section 22, a person, adult foster care facility, agency, or
14 representative or officer of a corporation, association, or
15 organization who violates this act is guilty of a misdemeanor,
16 punishable by imprisonment for not more than 1 year or a fine of
17 not more than \$1,000.00, or both.

18 (2) A person convicted of a misdemeanor under this act or
19 under chapter XXA of the Michigan penal code, ~~Act No. 328 of the~~
20 ~~Public Acts of 1931, being sections 1931 PA 328, MCL 750.145m to~~
21 ~~750.145r of the Michigan Compiled Laws, shall 750.145s, must~~ not be
22 involved with an adult foster care facility for a period of 5 years
23 after the conviction in any of the following ways:

24 (a) Participate in the administration or operation of the
25 facility.

26 (b) Have a financial interest in the operation of the
27 facility.

28 (c) Provide care to residents of the facility.

29 (d) Have contact with residents or staff on the premises of



1 the facility.

2 (e) Be employed by the facility.

3 (f) Reside in the facility.

4 (3) A person convicted of a felony under this act or ~~under~~
5 chapter XXA of ~~Act No. 328 of the Public Acts of 1931 shall~~ **the**
6 **Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145s, must**
7 not be involved with an adult foster care facility in any of the
8 following ways:

9 (a) Participate in the administration or operation of the
10 facility.

11 (b) Have a financial interest in the operation of the
12 facility.

13 (c) Provide care to residents of the facility.

14 (d) Have contact with residents or staff on the premises of
15 the facility.

16 (e) Be employed by the facility.

17 (f) Reside in the facility.

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

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

27 (b) Has been convicted of any of the following felonies, an
28 attempt or conspiracy to commit any of those felonies, or any other
29 state or federal crime that is similar to the felonies described in



1 this subdivision, other than a felony for a relevant crime
2 described under 42 USC 1320a-7(a), unless 15 years have lapsed
3 since the individual completed all of the terms and conditions of
4 his or her sentencing, parole, and probation for that conviction
5 before the date of application for employment or the date of the
6 execution of the independent contract:

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

12 (ii) A felony involving cruelty or torture.

13 (iii) A felony under chapter XXA of the Michigan penal code,
14 1931 PA 328, MCL 750.145m to ~~750.145r~~. **750.145s**.

15 (iv) A felony involving criminal sexual conduct.

16 (v) A felony involving abuse or neglect.

17 (vi) A felony involving the use of a firearm or dangerous
18 weapon.

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

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

29 (d) Has been convicted of any of the following misdemeanors,



1 other than a misdemeanor for a relevant crime described under 42
2 USC 1320a-7(a), or a state or federal crime that is substantially
3 similar to the misdemeanors described in this subdivision, within
4 the 10 years immediately preceding the date of application for
5 employment or the date of the execution of the independent
6 contract:

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

12 (ii) A misdemeanor under chapter XXA of the Michigan penal
13 code, 1931 PA 328, MCL 750.145m to ~~750.145r~~. **750.145s**.

14 (iii) A misdemeanor involving criminal sexual conduct.

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

17 (v) A misdemeanor involving abuse or neglect.

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

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

27 (ii) A misdemeanor involving home invasion.

28 (iii) A misdemeanor involving embezzlement.



1 (iv) A misdemeanor involving negligent homicide or a violation
2 of section 601d(1) of the Michigan vehicle code, 1949 PA 300, MCL
3 257.601d.

4 (v) A misdemeanor involving larceny unless otherwise provided
5 under subdivision (g).

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

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

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

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

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

23 (iii) A misdemeanor under part 74 of the public health code,
24 1978 PA 368, MCL 333.7401 to 333.7461, unless otherwise provided
25 under subdivision (g).

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



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

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

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

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

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

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



1 the department of state police shall input those fingerprints into
 2 the automated fingerprint identification system database
 3 established under subsection (14). An individual who is exempt
 4 under this subsection is not limited to working within the adult
 5 foster care facility with which he or she is employed by or under
 6 independent contract with on April 1, 2006 but may transfer to
 7 another adult foster care facility, mental health facility, or
 8 covered health facility. If an individual who is exempt under this
 9 subsection is subsequently convicted of a crime or offense
 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), he or she is no longer exempt and ~~shall~~**must** be
 15 terminated from employment or denied employment.

16 (3) An individual who applies for employment either as an
 17 employee or as an independent contractor with an adult foster care
 18 facility or staffing agency and who has not been the subject of a
 19 criminal history check conducted in compliance with this section
 20 shall give written consent at the time of application for the
 21 department of state police to conduct a criminal history check
 22 under this section, along with identification acceptable to the
 23 department of state police. If the individual has been the subject
 24 of a criminal history check conducted in compliance with this
 25 section, the individual shall give written consent at the time of
 26 application for the adult foster care facility or staffing agency
 27 to obtain the criminal history record information as prescribed in
 28 subsection (4) or (5) from the relevant licensing or regulatory
 29 department and for the department of state police to conduct a



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

27 (4) Upon receipt of the written consent to conduct a criminal
28 history check and identification required under subsection (3), the
29 adult foster care facility or staffing agency that has made a good-



1 faith offer of employment or independent contract to the individual
2 shall make a request to the department of state police to conduct a
3 criminal history check on the individual and input the individual's
4 fingerprints into the automated fingerprint identification system
5 database, and shall make a request to the relevant licensing or
6 regulatory department to perform a check of all relevant registries
7 established according to federal and state law and regulations for
8 any substantiated findings of abuse, neglect, or misappropriation
9 of property. The request ~~shall~~**must** be made in a manner prescribed
10 by the department of state police and the relevant licensing or
11 regulatory department or agency. The adult foster care facility or
12 staffing agency shall make the written consent and identification
13 available to the department of state police and the relevant
14 licensing or regulatory department or agency. Until June 30, 2020,
15 if the department of state police or the Federal Bureau of
16 Investigation charges a fee for conducting the criminal history
17 check, the charge ~~shall~~**must** be paid by or reimbursed by the
18 department. Until June 30, 2020, the adult foster care facility or
19 staffing agency shall not seek reimbursement for a charge imposed
20 by the department of state police or the federal bureau of
21 investigation from the individual who is the subject of the
22 criminal history check. Beginning July 1, 2020, if the department
23 of state police or the Federal Bureau of Investigation charges a
24 fee for conducting the criminal history check, the charge shall be
25 paid by the adult foster care facility, the staffing agency, or the
26 individual. The department of state police shall conduct a criminal
27 history check on the individual named in the request. The
28 department of state police shall provide the department with a
29 written report of the criminal history check conducted under this



1 subsection. The report shall contain any criminal history record
2 information on the individual maintained by the department of state
3 police.

4 (5) Upon receipt of the written consent to conduct a criminal
5 history check and identification required under subsection (3), if
6 the individual has applied for employment either as an employee or
7 as an independent contractor with an adult foster care facility or
8 staffing agency, the adult foster care facility or staffing agency
9 that has made a good-faith offer of employment or independent
10 contract shall comply with subsection (4) and shall make a request
11 to the department of state police to forward the individual's
12 fingerprints to the Federal Bureau of Investigation. The department
13 of state police shall request the Federal Bureau of Investigation
14 to make a determination of the existence of any national criminal
15 history pertaining to the individual. An individual described in
16 this subsection shall provide the department of state police with a
17 set of fingerprints. The department of state police shall complete
18 the criminal history check under subsection (4) and, except as
19 otherwise provided in this subsection, provide the results of its
20 determination under subsection (4) and the results of the Federal
21 Bureau of Investigation determination to the department within 30
22 days after the request is made. If the requesting adult foster care
23 facility or staffing agency is not a state department or agency and
24 if criminal history record information is disclosed on the written
25 report of the criminal history check or the Federal Bureau of
26 Investigation determination that resulted in a conviction, the
27 department shall notify the adult foster care facility or staffing
28 agency and the individual in writing of the type of crime disclosed
29 on the written report of the criminal history check or the Federal



1 Bureau of Investigation determination without disclosing the
2 details of the crime. The notification ~~shall~~**must** inform the adult
3 foster care facility or staffing agency and the applicant regarding
4 the appeal process in section 34c and ~~shall~~**must** include a
5 statement that the individual has a right to appeal the information
6 relied upon by the adult foster care facility or staffing agency in
7 making its decision regarding his or her employment eligibility
8 based on the criminal history check. Any charges imposed by the
9 department of state police or the Federal Bureau of Investigation
10 for conducting a criminal history check or making a determination
11 under this subsection ~~shall~~**must** be paid in the manner required
12 under subsection (4).

13 (6) If an adult foster care facility determines it necessary
14 to employ or independently contract with an individual before
15 receiving the results of the individual's criminal history check or
16 criminal history record information required under this section,
17 the adult foster care facility may conditionally employ the
18 individual if all of the following apply:

19 (a) The adult foster care facility requests the criminal
20 history check or criminal history record information required under
21 this section, upon conditionally employing the individual.

22 (b) The individual signs a written statement indicating all of
23 the following:

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

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

29 (iii) That he or she has not been the subject of a substantiated



1 finding as described in subsection (1) (i).

2 (iv) The individual agrees that, if the information in the
3 criminal history check conducted under this section does not
4 confirm the individual's statement under subparagraphs (i) to (iii),
5 his or her employment will be terminated by the adult foster care
6 facility as required under subsection (1) unless and until the
7 individual can prove that the information is incorrect.

8 (v) That he or she understands the conditions described in
9 subparagraphs (i) to (iv) that result in the termination of his or
10 her employment and that those conditions are good cause for
11 termination.

12 (c) Except as otherwise provided in this subdivision, the
13 adult foster care facility does not permit the individual to have
14 regular direct access to or provide direct services to residents in
15 the adult foster care facility without supervision until the
16 criminal history check or criminal history record information is
17 obtained and the individual is eligible for that employment. If
18 required under this subdivision, the adult foster care facility
19 shall provide on-site supervision of an individual in the facility
20 on a conditional basis under this subsection by an individual who
21 has undergone a criminal history check conducted in compliance with
22 this section. An adult foster care facility may permit an
23 individual in the facility on a conditional basis under this
24 subsection to have regular direct access to or provide direct
25 services to residents in the adult foster care facility without
26 supervision if all of the following conditions are met:

27 (i) The adult foster care facility, at its own expense and
28 before the individual has direct access to or provides direct
29 services to residents of the facility, conducts a search of public



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

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

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

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

20 (8) If an individual is conditionally employed under
21 subsection (6), and the information under subsection (3) or report
22 under subsection (4) or (5), if applicable, does not confirm the
23 individual's statement under subsection (6) (b) (i) to (iii), the adult
24 foster care facility shall terminate the individual's employment as
25 required by subsection (1).

26 (9) An individual who knowingly provides false information
27 regarding his or her identity, criminal convictions, or
28 substantiated findings on a statement described in subsection
29 (6) (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 (10) An adult foster care facility or staffing agency shall
4 use criminal history record information obtained under subsection
5 (3), (4), or (5) only for the purpose of evaluating an individual's
6 qualifications for employment in the position for which he or she
7 has applied and for the purposes of subsections (6) and (8). An
8 adult foster care facility or staffing agency or an employee of the
9 adult foster care facility or staffing agency shall not disclose
10 criminal history record information obtained under this section to
11 a person who is not directly involved in evaluating the
12 individual's qualifications for employment or independent contract.
13 An individual who knowingly uses or disseminates the criminal
14 history record information obtained under subsection (3), (4), or
15 (5) in violation of this subsection is guilty of a misdemeanor
16 punishable by imprisonment for not more than 93 days or a fine of
17 not more than \$1,000.00, or both. Except for a knowing or
18 intentional release of false information, an adult foster care
19 facility or staffing agency has no liability in connection with a
20 criminal history check conducted in compliance with this section or
21 the release of criminal history record information under this
22 subsection.

23 (11) Upon consent of an individual as required in subsection
24 (3) and upon request from an adult foster care facility or staffing
25 agency that has made a good-faith offer of employment or an
26 independent contract to the individual, the relevant licensing or
27 regulatory department shall review the criminal history record
28 information, if any, and notify the requesting adult foster care
29 facility or staffing agency of the information in the manner



1 prescribed in subsection (4) or (5). Until the Federal Bureau of
2 Investigation implements an automatic notification system similar
3 to the system required of the state police under subsection (14)
4 and federal regulations allow the federal criminal record to be
5 used for subsequent authorized uses, as determined in an order
6 issued by the department, an adult foster care facility or staffing
7 agency may rely on the criminal history record information provided
8 by the relevant licensing or regulatory department under this
9 subsection and a request to the Federal Bureau of Investigation to
10 make a subsequent determination of the existence of any national
11 criminal history pertaining to the individual is not necessary if
12 all of the following requirements are met:

13 (a) The criminal history check was conducted during the
14 immediately preceding 24-month period.

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

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

26 (12) As a condition of continued employment, each employee or
27 independent contractor shall do both of the following:

28 (a) Agree in writing to report to the adult foster care
29 facility or staffing agency immediately upon being arraigned on 1



1 or more of the criminal offenses listed in subsection (1)(a) to
2 (g), upon being convicted of 1 or more of the criminal offenses
3 listed in subsection (1)(a) to (g), upon becoming the subject of an
4 order or disposition described under subsection (1)(h), and upon
5 becoming the subject of a substantiated finding described under
6 subsection (1)(i). Reporting of an arraignment under this
7 subdivision is not cause for termination or denial of employment.

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

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

17 (14) In collaboration with the department of state police, the
18 department of technology, management, and budget shall establish
19 and maintain an automated fingerprint identification system
20 database that would allow the department of state police to store
21 and maintain all fingerprints submitted under this section and
22 would provide for an automatic notification at the time a
23 subsequent criminal arrest fingerprint card submitted into the
24 system matches a set of fingerprints previously submitted under
25 this section. Upon notification, the department of state police
26 shall immediately notify the department and the department shall
27 immediately contact each respective adult foster care facility or
28 staffing agency with which that individual is associated.
29 Information in the database established under this subsection is



1 confidential, is not subject to disclosure under the freedom of
2 information act, 1976 PA 442, MCL 15.231 to 15.246, and ~~shall~~**must**
3 not be disclosed to any person except for purposes of this act or
4 for law enforcement purposes.

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

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

28 (17) As used in this section:

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



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

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

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

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

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

23 (e) "Home health agency" means that term as defined in section
24 20173a of the public health code, 1978 PA 368, MCL 333.20173a.

25 (f) "Independent contract" means a contract entered into by an
26 adult foster care facility with an individual who provides the
27 contracted services independently or a contract entered into by an
28 adult foster care facility with a staffing agency that complies
29 with the requirements of this section to provide the contracted



1 services to the adult foster care facility on behalf of the
2 staffing agency.

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

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

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

11 (j) "Under the adult foster care facility's control" means an
12 individual employed by or under independent contract with an adult
13 foster care facility for whom the adult foster care facility does
14 both of the following:

15 (i) Determines whether the individual who has access to
16 residents may provide care, treatment, or other similar support
17 service functions to residents served by the adult foster care
18 facility.

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

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

22 (B) The tasks performed by the individual.

23 (C) The individual's work schedule.

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

27 (E) The compensation the individual receives for performing
28 his or her duties.

29 (F) The conditions under which the individual performs his or



1 her duties.

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

4 Enacting section 2. This amendatory act does not take effect
5 unless House Bill No. 4254 of the 100th Legislature is enacted into
6 law.

