

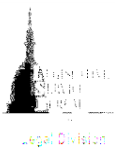
HOUSE BILL NO. 4257

February 26, 2019, Introduced by Reps. Crawford, Anthony, Wozniak, Pagan, Bolden, Hope, Elder, Manoogian, Liberati, Shannon, Ellison, Clemente, Gay-Dagnogo, Sabo, Sneller, Yancey, Kupp, Hood, Sowerby, Stone, Chirkun, Cynthia Johnson, Farrington, Vaupel, Whitsett, Lasinski, Calley, Yaroch, Filler, Cherry and Coleman and referred to the Committee on Families, Children, and Seniors.

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 2012 PA 52, section 31 as amended by 1994 PA 150, and section 34b as amended by 2014 PA 73.

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



1 foster care facility unless licensed by the department.

2 (2) Application for a license ~~shall~~**must** be made on forms
3 provided and in the manner prescribed by the department. The
4 application ~~shall~~**must** be accompanied by the fee prescribed in
5 section 13a.

6 (3) Before issuing or renewing a license, the department shall
7 investigate the activities and standards of care of the applicant
8 and shall make an on-site evaluation of the facility. On-site
9 inspections conducted in response to the application may be
10 conducted without prior notice to the applicant. Subject to
11 subsections (9), (10), and (11), the department shall issue or
12 renew a license if satisfied as to all of the following:

13 (a) The financial stability of the facility.

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

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

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

23 (e) The good moral character of the person responsible for the
24 daily operations of the facility and all employees of the facility.
25 The applicant ~~shall~~**must** be responsible for assessing the good
26 moral character of the employees of the facility. The person
27 responsible for the daily operation of the facility ~~shall~~**must** be
28 not less than 18 years of age.

29 (4) The department shall require an applicant or a licensee to



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

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

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

13 (7) A license ~~shall~~**must** be issued to a specific person for a
14 facility at a specific location, is nontransferable, and remains
15 the property of the department. The prohibition against transfer of
16 a license to another location does not apply if a licensee's adult
17 foster care facility or home is closed as a result of eminent
18 domain proceedings, if the facility or home, as relocated,
19 otherwise meets the requirements of this act and the rules
20 promulgated under this act.

21 (8) An applicant or licensee proposing a sale of an adult
22 foster care facility or home to another owner shall provide the
23 department with advance notice of the proposed sale in writing. The
24 applicant or licensee and other parties to the sale shall arrange
25 to meet with specified department representatives and shall obtain
26 before the sale a determination of the items of noncompliance with
27 applicable law and rules that ~~shall~~**must** be corrected. The
28 department shall notify the respective parties of the items of
29 noncompliance before the change of ownership, shall indicate that



1 the items of noncompliance ~~shall~~**must** be corrected as a condition
 2 of issuance of a license to the new owner, and shall notify the
 3 prospective purchaser of all licensure requirements.

4 (9) The department shall not issue a license to or renew the
 5 license of an owner, partner, or director of the applicant, who has
 6 regular direct access to residents or who has on-site facility
 7 operational responsibilities, or an applicant or the licensee
 8 designee, if any of those individuals have been convicted of 1 or
 9 more of the following:

10 (a) A felony under this act or under chapter XXA of the
 11 Michigan penal code, 1931 PA 328, MCL 750.145m to ~~750.145r.~~
 12 **750.145s.**

13 (b) A misdemeanor under this act or under chapter XXA of the
 14 Michigan penal code, 1931 PA 328, MCL 750.145m to ~~750.145r,~~
 15 **750.145s,** within the 10 years immediately preceding the
 16 application.

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

24 (10) If the department has revoked, suspended, or refused to
 25 renew a person's license for an adult foster care facility
 26 according to section 22, the department may refuse to issue a
 27 license to or renew a license of that person for a period of 5
 28 years after the suspension, revocation, or nonrenewal of the
 29 license.



1 (11) The department may refuse to issue a license to or renew
2 the license of an applicant if the department determines that the
3 applicant has a relationship with a former licensee whose license
4 under this act has been suspended, revoked, or nonrenewed under
5 subsection (9) or section 22 or a convicted person to whom a
6 license has been denied under subsection (9). This subsection
7 applies for 5 years after the suspension, revocation, or nonrenewal
8 of the former licensee's license or the denial of the convicted
9 person's license. For purposes of this subsection, an applicant has
10 a relationship with a former licensee or convicted person if the
11 former licensee or convicted person is involved with the facility
12 in 1 or more of the following ways:

13 (a) Participates in the administration or operation of the
14 facility.

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

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

17 (d) Has contact with residents or staff on the premises of the
18 facility.

19 (e) Is employed by the facility.

20 (f) Resides in the facility.

21 (12) If the department determines that an unlicensed facility
22 is an adult foster care facility, the department shall notify the
23 owner or operator of the facility that it is required to be
24 licensed under this act. A person receiving the notification
25 required under this section who does not apply for a license within
26 30 days is subject to the penalties described in subsection (13).

27 (13) Subject to subsection (12), a person who violates
28 subsection (1) is guilty of a misdemeanor, punishable by
29 imprisonment for not more than 2 years or a fine of not more than



1 \$50,000.00, or both. A person who has been convicted of a violation
2 of subsection (1) who commits a second or subsequent violation is
3 guilty of a felony, punishable by imprisonment for not more than 5
4 years or a fine of not more than \$75,000.00, or both.

5 (14) The department shall issue an initial or renewal license
6 not later than 6 months after the applicant files a completed
7 application. Receipt of the application is considered the date the
8 application is received by any agency or department of this state.
9 If the application is considered incomplete by the department, the
10 department shall notify the applicant in writing or make notice
11 electronically available within 30 days after receipt of the
12 incomplete application, describing the deficiency and requesting
13 additional information. If the department identifies a deficiency
14 or requires the fulfillment of a corrective action plan, the 6-
15 month period is tolled until either of the following occurs:

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

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

21 (15) The determination of the completeness of an application
22 does not operate as an approval of the application for the license
23 and does not confer eligibility of an applicant determined
24 otherwise ineligible for issuance of a license.

25 (16) If the department fails to issue or deny a license within
26 the time required by this section, the department shall return the
27 license fee and shall reduce the license fee for the applicant's
28 next renewal application, if any, by 15%. Failure to issue or deny
29 a license within the time period required under this section does



1 not allow the department to otherwise delay processing an
2 application. The completed application ~~shall~~**must** be placed in
3 sequence with other completed applications received at that same
4 time. The department shall not discriminate against an applicant in
5 the processing of an application based on the fact that the
6 application fee was refunded or discounted under this subsection.

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

12 (18) The department director shall submit a report by December
13 1 of each year to the standing committees and appropriations
14 subcommittees of the senate and house of representatives concerned
15 with human services issues. The department director shall include
16 all of the following information in the report concerning the
17 preceding fiscal year:

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

21 (b) The number of applications requiring a request for
22 additional information.

23 (c) The number of applications rejected.

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

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

28 (19) An applicant, if an individual, shall give written
29 consent at the time of original license application and a licensee



1 designee shall give written consent at the time of appointment for
2 the department of state police to conduct both of the following:

3 (a) A criminal history check.

4 (b) A criminal records check through the ~~federal bureau of~~
5 ~~investigation.~~ **Federal Bureau of Investigation.**

6 (20) Unless already submitted under subsection (19), an owner,
7 partner, or director of the applicant who has regular direct access
8 to residents or who has on-site facility operational
9 responsibilities shall give written consent at the time of original
10 license application for the department of state police to conduct
11 both of the following:

12 (a) A criminal history check.

13 (b) A criminal records check through the ~~federal bureau of~~
14 ~~investigation.~~ **Federal Bureau of Investigation.**

15 (21) The department shall require the applicant, if an
16 individual, the licensee designee, owner, partner, or director of
17 the applicant who has regular direct access to residents or who has
18 on-site facility operational responsibilities to submit his or her
19 fingerprints to the department of state police for the criminal
20 history check and criminal records check described in subsections
21 (19) and (20).

22 (22) The department shall request a criminal history check and
23 criminal records check required under this section in the manner
24 prescribed by the department of state police. The department of
25 state police shall conduct the criminal history check and provide a
26 report of the results to the licensing or regulatory bureau of the
27 department. The report shall contain any criminal history
28 information on the person maintained by the department of state
29 police and the results of the criminal records check from the



1 ~~federal bureau of investigation.~~ **Federal Bureau of Investigation.**

2 The department of state police may charge the person on whom the
3 criminal history check and criminal records check are performed
4 under this section a fee that does not exceed the actual and
5 reasonable cost of conducting the checks.

6 (23) ~~Not later than 1 year after the effective date of the~~
7 ~~2012 amendatory act that amended this subsection, all~~ **All** licensees
8 and licensee designees of facilities licensed on ~~the effective date~~
9 ~~of the 2012 amendatory act that amended this subsection~~ **March 13,**
10 **2012** and all persons described in subsection (20) shall comply with
11 the requirements of this section.

12 (24) ~~Beginning the effective date of the 2012 amendatory act~~
13 ~~that amended this subsection, if~~ **If** an applicant or licensee
14 designee or person described in subsection (20) applies for a
15 license or to renew a license to operate an adult foster care
16 facility and he or she or the licensee designee previously
17 underwent a criminal history check and criminal records check
18 required under subsection (19) or (20) or under section 134a of the
19 mental health code, 1974 PA 258, MCL 330.1134a, and has remained
20 continuously licensed or continuously employed under section 34b or
21 under section 20173a of the public health code, 1978 PA 368, MCL
22 333.20173a, after the criminal history check and criminal records
23 check have been performed, that person is not required to submit to
24 another criminal history check or criminal records check upon
25 renewal of the license obtained under subsection (3).

26 (25) The department of state police shall store and maintain
27 all fingerprints submitted under this act in an automated
28 fingerprint identification system database that provides for an
29 automatic notification at the time of a subsequent criminal arrest



1 fingerprint card submitted into the system that matches a set of
 2 fingerprints previously submitted in accordance with this act. Upon
 3 notification, the department of state police shall immediately
 4 notify the department and the department shall take the appropriate
 5 action.

6 (26) A licensee, licensee designee, owner, partner, or
 7 director of the licensee ~~shall~~**must** not be permitted on the
 8 premises of an adult foster care facility if he or she has been
 9 convicted of any of the following: adult abuse, neglect, or
 10 financial exploitation; or listed offenses as defined in section 2
 11 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

12 (27) As used in this section, "completed application" means an
 13 application complete on its face and submitted with any applicable
 14 licensing fees as well as any other information, records, approval,
 15 security, or similar item required by law or rule from a local unit
 16 of government, a federal agency, or a private entity but not from
 17 another department or agency of this state. A completed application
 18 does not include a health inspection performed by a local health
 19 department.

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

26 (2) A person convicted of a misdemeanor under this act or
 27 under chapter XXA of the Michigan penal code, ~~Act No. 328 of the~~
 28 ~~Public Acts of 1931, being sections 1931 PA 328, MCL 750.145m to~~
 29 ~~750.145r of the Michigan Compiled Laws, shall~~ **750.145s, must** not be



1 involved with an adult foster care facility for a period of 5 years
2 after the conviction in any of the following ways:

3 (a) Participate in the administration or operation of the
4 facility.

5 (b) Have a financial interest in the operation of the
6 facility.

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

8 (d) Have contact with residents or staff on the premises of
9 the facility.

10 (e) Be employed by the facility.

11 (f) Reside in the facility.

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

17 (a) Participate in the administration or operation of the
18 facility.

19 (b) Have a financial interest in the operation of the
20 facility.

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

22 (d) Have contact with residents or staff on the premises of
23 the facility.

24 (e) Be employed by the facility.

25 (f) Reside in the facility.

26 Sec. 34b. (1) In addition to the restrictions prescribed in
27 sections 13, 22, and 31, and except as otherwise provided in
28 subsection (2), an adult foster care facility shall not employ or
29 independently contract with an individual who regularly has direct



1 access to or provides direct services to residents of the adult
2 foster care facility if the individual satisfies 1 or more of the
3 following:

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

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

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

20 (ii) A felony involving cruelty or torture.

21 (iii) A felony under chapter XXA of the Michigan penal code,
22 1931 PA 328, MCL 750.145m to ~~750.145r~~. **750.145s**.

23 (iv) A felony involving criminal sexual conduct.

24 (v) A felony involving abuse or neglect.

25 (vi) A felony involving the use of a firearm or dangerous
26 weapon.

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

29 (c) Has been convicted of a felony or an attempt or conspiracy



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

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

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

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

22 (iii) A misdemeanor involving criminal sexual conduct.

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

25 (v) A misdemeanor involving abuse or neglect.

26 (e) 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 5 years immediately preceding the date of application for
2 employment or the date of the execution of the independent
3 contract:

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

6 (ii) A misdemeanor involving home invasion.

7 (iii) A misdemeanor involving embezzlement.

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

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

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

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

18 (f) 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 3 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 for assault if there was no use of a firearm
26 or dangerous weapon and no intent to commit murder or inflict great
27 bodily injury.

28 (ii) A misdemeanor of retail fraud in the third degree unless



1 otherwise provided under subdivision (g).

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

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

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

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

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

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

25 (2) Except as otherwise provided in this subsection or
26 subsection (6), an adult foster care facility shall not employ or
27 independently contract with an individual who has direct access to
28 residents until the adult foster care facility or staffing agency
29 has conducted a criminal history check in compliance with this



1 section or has received criminal history record information in
2 compliance with subsections (3) and (11). This subsection and
3 subsection (1) do not apply to an individual who is employed by or
4 under contract to an adult foster care facility before April 1,
5 2006. On or before April 1, 2011, an individual who is exempt under
6 this subsection and who has not been the subject of a criminal
7 history check conducted in compliance with this section shall
8 provide the department of state police a set of fingerprints and
9 the department of state police shall input those fingerprints into
10 the automated fingerprint identification system database
11 established under subsection (14). An individual who is exempt
12 under this subsection is not limited to working within the adult
13 foster care facility with which he or she is employed by or under
14 independent contract with on April 1, 2006 but may transfer to
15 another adult foster care facility, mental health facility, or
16 covered health facility. If an individual who is exempt under this
17 subsection is subsequently convicted of a crime or offense
18 described under subsection (1)(a) to (g) or found to be the subject
19 of a substantiated finding described under subsection (1)(i) or an
20 order or disposition described under subsection (1)(h), or is found
21 to have been convicted of a relevant crime described under 42 USC
22 1320a-7(a), he or she is no longer exempt and ~~shall~~**must** be
23 terminated from employment or denied employment.

24 (3) An individual who applies for employment either as an
25 employee or as an independent contractor with an adult foster care
26 facility or staffing agency and who has not been the subject of a
27 criminal history check conducted in compliance with this section
28 shall give written consent at the time of application for the
29 department of state police to conduct a criminal history check



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



1 that employs an individual who regularly has direct access to or
 2 provides direct services to residents under an independent contract
 3 with an adult foster care facility shall submit information
 4 regarding the criminal history check conducted by the staffing
 5 agency to the adult foster care facility that has made a good faith
 6 offer of independent contract to that applicant.

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



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

9 (5) Upon receipt of the written consent to conduct a criminal
 10 history check and identification required under subsection (3), if
 11 the individual has applied for employment either as an employee or
 12 as an independent contractor with an adult foster care facility or
 13 staffing agency, the adult foster care facility or staffing agency
 14 that has made a good faith offer of employment or independent
 15 contract shall comply with subsection (4) and shall make a request
 16 to the department of state police to forward the individual's
 17 fingerprints to the ~~federal bureau of investigation~~. **Federal Bureau**
 18 **of Investigation**. The department of state police shall request the
 19 ~~federal bureau of investigation~~ **Federal Bureau of Investigation** to
 20 make a determination of the existence of any national criminal
 21 history pertaining to the individual. An individual described in
 22 this subsection shall provide the department of state police with a
 23 set of fingerprints. The department of state police shall complete
 24 the criminal history check under subsection (4) and, except as
 25 otherwise provided in this subsection, provide the results of its
 26 determination under subsection (4) and the results of the ~~federal~~
 27 ~~bureau of investigation~~ **Federal Bureau of Investigation**
 28 determination to the department within 30 days after the request is
 29 made. If the requesting adult foster care facility or staffing



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

21 (6) If an adult foster care facility determines it necessary
 22 to employ or independently contract with an individual before
 23 receiving the results of the individual's criminal history check or
 24 criminal history record information required under this section,
 25 the adult foster care facility may conditionally employ the
 26 individual if all of the following apply:

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



1 (b) The individual signs a written statement indicating all of
2 the following:

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

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

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

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

16 (v) That he or she understands the conditions described in
17 subparagraphs (i) to (iv) that result in the termination of his or
18 her employment and that those conditions are good cause for
19 termination.

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



1 this section. An adult foster care facility may permit an
2 individual in the facility on a conditional basis under this
3 subsection to have regular direct access to or provide direct
4 services to residents in the adult foster care facility without
5 supervision if all of the following conditions are met:

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

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

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

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

28 (8) If an individual is conditionally employed under
29 subsection (6), and the information under subsection (3) or report



1 under subsection (4) or (5), if applicable, does not confirm the
2 individual's statement under subsection (6)(b)(i) to (iii), the adult
3 foster care facility shall terminate the individual's employment as
4 required by subsection (1).

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

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



1 subsection.

2 (11) Upon consent of an individual as required in subsection
 3 (3) and upon request from an adult foster care facility or staffing
 4 agency that has made a good faith offer of employment or an
 5 independent contract to the individual, the relevant licensing or
 6 regulatory department shall review the criminal history record
 7 information, if any, and notify the requesting adult foster care
 8 facility or staffing agency of the information in the manner
 9 prescribed in subsection (4) or (5). Until the ~~federal bureau of~~
 10 ~~investigation~~ **Federal Bureau of Investigation** implements an
 11 automatic notification system similar to the system required of the
 12 state police under subsection (14) and federal regulations allow
 13 the federal criminal record to be used for subsequent authorized
 14 uses, as determined in an order issued by the department, an adult
 15 foster care facility or staffing agency may rely on the criminal
 16 history record information provided by the relevant licensing or
 17 regulatory department under this subsection and a request to the
 18 ~~federal bureau of investigation~~ **Federal Bureau of Investigation** to
 19 make a subsequent determination of the existence of any national
 20 criminal history pertaining to the individual is not necessary if
 21 all of the following requirements are met:

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

24 (b) The individual has been continuously employed by an adult
 25 foster care facility, mental health facility, or covered health
 26 facility, or the staffing agency since the criminal history check
 27 was conducted in compliance with this section or meets the
 28 continuous employment requirement of this subdivision other than
 29 being on layoff status for less than 1 year from an adult foster



1 care facility, mental health facility, or covered health facility.

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

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

8 (a) Agree in writing to report to the adult foster care
9 facility or staffing agency immediately upon being arraigned on 1
10 or more of the criminal offenses listed in subsection (1)(a) to
11 (g), upon being convicted of 1 or more of the criminal offenses
12 listed in subsection (1)(a) to (g), upon becoming the subject of an
13 order or disposition described under subsection (1)(h), and upon
14 becoming the subject of a substantiated finding described under
15 subsection (1)(i). Reporting of an arraignment under this
16 subdivision is not cause for termination or denial of employment.

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

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

26 (14) In collaboration with the department of state police, the
27 department of technology, management, and budget shall establish
28 and maintain an automated fingerprint identification system
29 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 at the time 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 adult foster care
8 facility or staffing agency with which that individual is
9 associated. Information in the database established under this
10 subsection is confidential, is not subject to disclosure under the
11 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and
12 ~~shall~~**must** not be disclosed to any person except for purposes of
13 this act or for law enforcement purposes.

14 (15) If an individual independently contracts with an adult
15 foster care facility, subsections (1) and (2) do not apply if the
16 individual is not under the adult foster care facility's control
17 and the contractual work performed by the individual is not
18 directly related to the clinical, health care, or personal services
19 delivered by the adult foster care facility or if the individual's
20 duties are not performed on an ongoing basis with direct access to
21 residents. This exception includes, but is not limited to, an
22 individual who independently contracts with the adult foster care
23 facility to provide utility, maintenance, construction, or
24 communication services.

25 (16) The department shall maintain an electronic web-based
26 system to assist the adult foster care facilities and staffing
27 agencies required to check relevant registries and conduct criminal
28 history checks of its employees and independent contractors and to
29 provide for an automated notice to the adult foster care facilities



1 and staffing agencies for the individuals entered in the system
2 who, since the initial criminal history check, have been convicted
3 of a disqualifying offense or have been the subject of a
4 substantiated finding of abuse, neglect, or misappropriation of
5 property. The department may charge a staffing agency a 1-time set-
6 up fee of up to \$100.00 for access to the electronic web-based
7 system under this section.

8 (17) An adult foster care facility, staffing agency, or a
9 prospective employee covered under this section may not be charged
10 for the cost of a criminal history check required under this act.

11 (18) As used in this section:

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

13 (i) For a crime that is not a relevant crime, a final
14 conviction, the payment of a fine, a plea of guilty or nolo
15 contendere if accepted by the court, or a finding of guilt for a
16 criminal law violation or a juvenile adjudication or disposition by
17 the juvenile division of probate court or family division of
18 circuit court for a violation that if committed by an adult would
19 be a crime.

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

22 (b) "Covered health facility" means a nursing home, county
23 medical care facility, hospice, hospital that provides swing bed
24 services, home for the aged, or home health agency licensed under
25 article 17 of the public health code, 1978 PA 368, MCL 333.20101 to
26 333.22260.

27 (c) "Criminal history check conducted in compliance with this
28 section" includes a criminal history check conducted under this
29 section, under section 134a of the mental health code, 1974 PA 258,



1 MCL 330.1134a, or under section 20173a of the public health code,
2 1978 PA 368, MCL 333.20173a.

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

6 (e) "Home health agency" means that term as defined in section
7 20173a of the public health code, 1978 PA 368, MCL 333.20173a.

8 (f) "Independent contract" means a contract entered into by an
9 adult foster care facility with an individual who provides the
10 contracted services independently or a contract entered into by an
11 adult foster care facility with a staffing agency that complies
12 with the requirements of this section to provide the contracted
13 services to the adult foster care facility on behalf of the
14 staffing agency.

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

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

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

23 (j) "Under the adult foster care facility's control" means an
24 individual employed by or under independent contract with an adult
25 foster care facility for whom the adult foster care facility does
26 both of the following:

27 (i) Determines whether the individual who has access to
28 residents may provide care, treatment, or other similar support
29 service functions to residents served by the adult foster care



1 facility.

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

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

5 (B) The tasks performed by the individual.

6 (C) The individual's work schedule.

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

10 (E) The compensation the individual receives for performing
11 his or her duties.

12 (F) The conditions under which the individual performs his or
13 her duties.

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

16 Enacting section 2. This amendatory act does not take effect
17 unless Senate Bill No.____ or House Bill No.____ (request no.
18 00483'19) of the 100th Legislature is enacted into law.

