

HOUSE BILL NO. 5733

April 24, 2020, Introduced by Rep. Iden and referred to the Committee on Government Operations.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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



1 psychiatric facility or other facility defined in 42 USC 1396d(d)
2 if the individual satisfies 1 or more of the following:

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

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

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 clinical privileges or the date of
7 the execution of the 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 clinical privileges or the date of the execution of
14 the independent 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.

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 clinical privileges or the date of the execution of
3 the independent 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, ~~1940~~ **1949** PA 300,
10 MCL 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 clinical privileges or the date of the execution of
24 the independent 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 clinical privileges or the date of the execution of
11 the independent contract:

12 (i) A misdemeanor under part 74 of the public health code, 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 (5), a psychiatric facility or other facility defined in
27 42 USC 1396d(d) shall not employ, independently contract with, or
28 grant privileges to an individual who regularly has direct access
29 to or provides direct services to patients or residents in the



1 psychiatric facility or other facility defined in 42 USC 1396d(d)
2 until the psychiatric facility or other facility defined in 42 USC
3 1396d(d) or staffing agency has conducted a criminal history check
4 in compliance with this section or received criminal history record
5 information in compliance with subsection (3) or (10). This
6 subsection and subsection (1) do not apply to any of the following:

7 (a) An individual who is employed by, under independent
8 contract to, or granted clinical privileges in a psychiatric
9 facility or other facility defined in 42 USC 1396d(d) before April
10 1, 2006. On or before April 1, 2011, an individual who is exempt
11 under this subdivision and who has not been the subject of a
12 criminal history check conducted in compliance with this section
13 shall provide the department of state police with a set of
14 fingerprints and the department of state police shall input those
15 fingerprints into the automated fingerprint identification system
16 database established under subsection (13). An individual who is
17 exempt under this subdivision is not limited to working within the
18 psychiatric facility or other facility defined in 42 USC 1396d(d)
19 with which he or she is employed by, under independent contract to,
20 or granted clinical privileges on April 1, 2006 but may transfer to
21 another psychiatric facility or other facility defined in 42 USC
22 1396d(d), covered health facility, or adult foster care facility.
23 If an individual who is exempt under this subdivision is
24 subsequently convicted of a crime described under subsection (1)(a)
25 through (g) or found to be the subject of a substantiated finding
26 described under subsection (1)(i) or an order or disposition
27 described under subsection (1)(h), or is found to have been
28 convicted of a relevant crime described under subsection (1)(a),
29 then he or she is no longer exempt and shall be terminated from



1 employment or denied employment or clinical privileges.

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

13 (3) An individual who applies for employment either as an
14 employee or as an independent contractor or for clinical privileges
15 with a psychiatric facility or other facility defined in 42 USC
16 1396d(d) or a staffing agency and who has not been the subject of a
17 criminal history check conducted in compliance with this section
18 shall give written consent at the time of application for the
19 department of state police to conduct a criminal history check
20 under this section, along with identification acceptable to the
21 department of state police. If the applicant has been the subject
22 of a criminal history check conducted in compliance with this
23 section, the applicant shall give written consent at the time of
24 application for the psychiatric facility or other facility defined
25 in 42 USC 1396d(d) or staffing agency to obtain the criminal
26 history record information as prescribed in subsection (4) from the
27 relevant licensing or regulatory department and for the department
28 of state police to conduct a criminal history check under this
29 section if the requirements of subsection (10) are not met and a



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

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



1 history check and identification required under subsection (3), a
 2 psychiatric facility or other facility defined in 42 USC 1396d(d)
 3 or staffing agency that has made a good-faith offer of employment
 4 or an independent contract or clinical privileges to the applicant
 5 shall make a request to the department of state police to conduct a
 6 criminal history check on the applicant, to input the applicant's
 7 fingerprints into the automated fingerprint identification system
 8 database, and to forward the applicant's fingerprints to the
 9 ~~federal bureau of investigation.~~ **Federal Bureau of Investigation.**
 10 The department of state police shall request 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 applicant. The applicant shall provide the
 14 department of state police with a set of fingerprints. The request
 15 shall be made in a manner prescribed by the department of state
 16 police. The psychiatric facility or other facility defined in 42
 17 USC 1396d(d) or staffing agency shall make the written consent and
 18 identification available to the department of state police. The
 19 psychiatric facility or other facility defined in 42 USC 1396d(d)
 20 or staffing agency shall make a request regarding that applicant to
 21 the relevant licensing or regulatory department to conduct a check
 22 of all relevant registries established under federal and state law
 23 and regulations for any substantiated findings of abuse, neglect,
 24 or misappropriation of property. If the department of state police
 25 or the ~~federal bureau of investigation~~ **Federal Bureau of**
 26 **Investigation** charges a fee for conducting the criminal history
 27 check, the psychiatric facility or other facility defined in 42 USC
 28 1396d(d) or staffing agency shall pay the cost of the charge. The
 29 psychiatric facility or other facility defined in 42 USC 1396d(d)



1 or staffing agency shall not seek reimbursement for a charge
 2 imposed by the department of state police or the ~~federal bureau of~~
 3 ~~investigation~~ **Federal Bureau of Investigation** from the individual
 4 who is the subject of the criminal history check. A prospective
 5 employee or a prospective independent contractor covered under this
 6 section may not be charged for the cost of a criminal history check
 7 required under this section. The department of state police shall
 8 conduct a criminal history check on the applicant named in the
 9 request. The department of state police shall provide the
 10 department with a written report of the criminal history check
 11 conducted under this subsection. The report shall contain any
 12 criminal history record information on the applicant maintained by
 13 the department of state police. The department of state police
 14 shall provide the results of the ~~federal bureau of investigation~~
 15 **Federal Bureau of Investigation** determination to the department
 16 within 30 days after the request is made. If the requesting
 17 psychiatric facility or other facility defined in 42 USC 1396d(d)
 18 or staffing agency is not a state department or agency and if
 19 criminal history record information is disclosed on the written
 20 report of the criminal history check or the ~~federal bureau of~~
 21 ~~investigation~~ **Federal Bureau of Investigation** determination that
 22 resulted in a conviction, the department shall notify the
 23 psychiatric facility or other facility defined in 42 USC 1396d(d)
 24 or staffing agency and the applicant in writing of the type of
 25 crime disclosed on the written report of the criminal history check
 26 or the ~~federal bureau of investigation~~ **Federal Bureau of**
 27 **Investigation** determination without disclosing the details of the
 28 crime. Any charges imposed by the department of state police or the
 29 ~~federal bureau of investigation~~ **Federal Bureau of Investigation** for



1 conducting a criminal history check or making a determination under
2 this subsection shall be paid in the manner required under this
3 subsection. The notice shall include a statement that the applicant
4 has a right to appeal the information relied upon by the
5 psychiatric facility or other facility defined in 42 USC 1396d(d)
6 or staffing agency regarding his or her employment eligibility
7 based on the criminal history check. The notice shall also include
8 information regarding where to file and describing the appellate
9 procedures established under section 20173b of the public health
10 code, 1978 PA 368, MCL 333.20173b.

11 (5) If a psychiatric facility or other facility defined in 42
12 USC 1396d(d) determines it necessary to employ or grant clinical
13 privileges to an applicant before receiving the results of the
14 applicant's criminal history check or criminal history record
15 information under this section, the psychiatric facility or other
16 facility defined in 42 USC 1396d(d) may conditionally employ or
17 grant conditional clinical privileges to the individual if all of
18 the following apply:

19 (a) The psychiatric facility or other facility defined in 42
20 USC 1396d(d) requests the criminal history check or criminal
21 history record information under this section upon conditionally
22 employing or conditionally granting clinical privileges to the
23 individual.

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

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



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

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

5 (iv) The individual agrees that, if the information in the
6 criminal history check conducted under this section does not
7 confirm the individual's statements under subparagraphs (i) ~~through~~
8 ~~to (iii)~~, his or her employment or clinical privileges will be
9 terminated by the psychiatric facility or other facility defined in
10 42 USC 1396d(d) as required under subsection (1) unless and until
11 the individual appeals and can prove that the information is
12 incorrect.

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

17 (c) Except as otherwise provided in this subdivision, the
18 psychiatric facility or other facility defined in 42 USC 1396d(d)
19 does not permit the individual to have regular direct access to or
20 provide direct services to patients or residents in the psychiatric
21 facility or other facility defined in 42 USC 1396d(d) without
22 supervision until the criminal history check or criminal history
23 record information is obtained and the individual is eligible for
24 that employment or clinical privileges. If required under this
25 subdivision, the psychiatric facility or other facility defined in
26 42 USC 1396d(d) shall provide on-site supervision of an individual
27 in the facility on a conditional basis under this subsection by an
28 individual who has undergone a criminal history check conducted in
29 compliance with this section. A psychiatric facility or other



1 facility defined in 42 USC 1396d(d) may permit an individual in the
2 facility on a conditional basis under this subsection to have
3 regular direct access to or provide direct services to patients or
4 residents in the psychiatric facility or other facility defined in
5 42 USC 1396d(d) without supervision if all of the following
6 conditions are met:

7 (i) The psychiatric facility or other facility defined in 42
8 USC 1396d(d), at its own expense and before the individual has
9 direct access to or provides direct services to patients or
10 residents of the psychiatric facility or other facility defined in
11 42 USC 1396d(d), conducts a search of public records on that
12 individual through the internet criminal history access tool
13 maintained by the department of state police and the results of
14 that search do not uncover any information that would indicate that
15 the individual is not eligible to have regular direct access to or
16 provide direct services to patients or residents under this
17 section.

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

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

29 (6) The department shall develop and distribute a model form



1 for the statements required under subsection (5)(b) and (c). The
2 department shall make the model form available to psychiatric
3 facilities or other facility defined in 42 USC 1396d(d) subject to
4 this section upon request at no charge.

5 (7) If an individual is employed as a conditional employee or
6 is granted conditional clinical privileges under subsection (5),
7 and the information under subsection (3) or report under subsection
8 (4) does not confirm the individual's statement under subsection
9 (5)(b)(i) ~~through to (iii)~~, the psychiatric facility or other
10 facility defined in 42 USC 1396d(d) shall terminate the
11 individual's employment or clinical privileges as required by
12 subsection (1).

13 (8) An individual who knowingly provides false information
14 regarding his or her identity, criminal convictions, or
15 substantiated findings on a statement described in subsection
16 (5)(b)(i) ~~through to (iii)~~ is guilty of a misdemeanor punishable by
17 imprisonment for not more than 93 days or a fine of not more than
18 \$500.00, or both.

19 (9) A psychiatric facility or other facility defined in 42 USC
20 1396d(d) or staffing agency shall use criminal history record
21 information obtained under subsection (3) or (4) only for the
22 purpose of evaluating an applicant's qualifications for employment,
23 an independent contract, or clinical privileges in the position for
24 which he or she has applied and for the purposes of subsections (5)
25 and (7). A psychiatric facility or other facility defined in 42 USC
26 1396d(d) or staffing agency or an employee of the psychiatric
27 facility or other facility defined in 42 USC 1396d(d) or staffing
28 agency shall not disclose criminal history record information
29 obtained under subsection (3) or (4) to a person who is not



1 directly involved in evaluating the applicant's qualifications for
2 employment, an independent contract, or clinical privileges. An
3 individual who knowingly uses or disseminates the criminal history
4 record information obtained under subsection (3) or (4) in
5 violation of this subsection is guilty of a misdemeanor punishable
6 by imprisonment for not more than 93 days or a fine of not more
7 than \$1,000.00, or both. Except for a knowing or intentional
8 release of false information, a psychiatric facility or other
9 facility defined in 42 USC 1396d(d) or staffing agency has no
10 liability in connection with a criminal history check conducted in
11 compliance with this section or the release of criminal history
12 record information under this subsection.

13 (10) Upon consent of an applicant as required in subsection
14 (3) and upon request from a psychiatric facility or other facility
15 defined in 42 USC 1396d(d) or staffing agency that has made a good-
16 faith offer of employment or an independent contract or clinical
17 privileges to the applicant, the relevant licensing or regulatory
18 department shall review the criminal history record information, if
19 any, and notify the requesting psychiatric facility or other
20 facility defined in 42 USC 1396d(d) or staffing agency of the
21 information in the manner prescribed in subsection (4). Until the
22 ~~federal bureau of investigation~~ **Federal Bureau of Investigation**
23 implements an automatic notification system similar to the system
24 required of the state police under subsection (13) and federal
25 regulations allow the federal criminal record to be used for
26 subsequent authorized uses, as determined in an order issued by the
27 department, a covered health or staffing agency facility may rely
28 on the criminal history record information provided by the relevant
29 licensing or regulatory department under this subsection and a



1 request to the ~~federal bureau of investigation~~ **Federal Bureau of**
 2 **Investigation** to make a subsequent determination of the existence
 3 of any national criminal history pertaining to the applicant is not
 4 necessary if all of the following requirements are met:

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

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

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

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

23 (a) Agree in writing to report to the psychiatric facility or
 24 other facility defined in 42 USC 1396d(d) or staffing agency
 25 immediately upon being arraigned for 1 or more of the criminal
 26 offenses listed in subsection (1)(a) ~~through to~~ (g), upon being
 27 convicted of 1 or more of the criminal offenses listed in
 28 subsection (1)(a) ~~through to~~ (g), upon becoming the subject of an
 29 order or disposition described under subsection (1)(h), and upon



1 being the subject of a substantiated finding of neglect, abuse, or
2 misappropriation of property as described in subsection (1)(i).
3 Reporting of an arraignment under this subdivision is not cause for
4 termination or denial of employment.

5 (b) If a set of fingerprints is not already on file with the
6 department of state police, provide the department of state police
7 with a set of fingerprints.

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

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



1 MCL 15.231 to 15.246, and shall not be disclosed to any person
2 except for purposes of this act or for law enforcement purposes.

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

16 (15) **This section is subject to section 134b.**

17 (16) ~~(15)~~ As used in this section:

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

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

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

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



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

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

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

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

16 (f) "Home health agency" means ~~a person certified by medicare~~
17 ~~whose business is to provide to individuals in their places of~~
18 ~~residence other than in a hospital, nursing home, or county medical~~
19 ~~care facility 1 or more of the following services: nursing~~
20 ~~services, therapeutic services, social work services, homemaker~~
21 ~~services, home health aide services, or other related services.~~**that**
22 **term as defined in section 20173a of the public health code, 1978**
23 **PA 368, MCL 333.20173a.**

24 (g) "Independent contract" means a contract entered into by a
25 health facility or agency with an individual who provides the
26 contracted services independently or a contract entered into by a
27 health facility or agency with a staffing agency that complies with
28 the requirements of this section to provide the contracted services
29 to the psychiatric facility or other facility defined in 42 USC



1 1396d(d) on behalf of the staffing agency.

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

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

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

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

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

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

21 (B) The tasks performed by the individual.

22 (C) The individual's work schedule.

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

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

28 (F) The conditions under which the individual performs his or
29 her duties.



1 Sec. 134b. Notwithstanding any provision of section 134a to
2 the contrary, during the states of emergency and disaster declared
3 under Executive Order No. 2020-30 or any extension of that order,
4 the department may temporarily suspend any law or regulation to the
5 extent that it requires fingerprinting of individuals for
6 employment or independently contracting with psychiatric hospitals
7 or psychiatric units.

