HOUSE BILL NO. 6401

September 24, 2026, Introduced by Rep. Lightner and referred to Committee on Health Policy.

A bill to amend 1978 PA 368, entitled

"Public health code,"

by amending section 20173a (MCL 333.20173a), as amended by 2017 PA 167.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 20173a. (1) Except as otherwise provided in subsection (2), a covered facility shall not employ, independently contract with, or grant clinical privileges to an individual who regularly has direct access to or provides direct services to patients or

residents in the covered facility if the individual satisfies 1 or more of the following:

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

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

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

(*ii*) A felony involving cruelty or torture.

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

(*iv*) A felony involving criminal sexual conduct.

(*v*) A felony involving abuse or neglect.

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

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

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

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

(c) ~~(d)~~ Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime, ~~described under 42 USC 1320a-7(a),~~ or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the ~~10~~ **5** years immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract:

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

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

(*iii*) A misdemeanor involving criminal sexual conduct.

(*iv*) A misdemeanor involving cruelty or torture unless otherwise provided under subdivision ~~(c).~~**(d).**

(*v*) A misdemeanor involving abuse or neglect.

(*vi*) A misdemeanor involving home invasion.

(*vii*) A misdemeanor involving embezzlement.

(*viii*) A misdemeanor involving negligent homicide or a violation of section 601d(1) of the Michigan vehicle code, 1949 PA 300, MCL

257.601d.

(d) ~~(c) Has~~ **If the individual is licensed, registered, or otherwise authorized to engage in a health profession under article 15, has** been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime, ~~described under 42 USC 1320a-7(a),~~ or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the 5 years immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract:

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

~~(*ii*) A misdemeanor involving home invasion.~~

~~(*iii*) A misdemeanor involving embezzlement.~~

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

(*ii*) ~~(*v*)~~ A misdemeanor involving larceny. ~~unless otherwise provided under subdivision (g).~~

(*iii*) ~~(*vi*)~~ A misdemeanor of retail fraud in the second degree. ~~unless otherwise provided under subdivision (g).~~

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

~~(f) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7(a), or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the 3 years immediately preceding the date of application for~~

~~employment or clinical privileges or the date of the execution of the independent contract:~~

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

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

~~(*iii*) A misdemeanor under part 74 unless otherwise provided under subdivision (g).~~

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

~~(*i*) A misdemeanor under part 74 if the individual, at the time of conviction, is under the age of 18.~~

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

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

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

(2) Except as otherwise provided in this subsection or

subsection (5), a covered facility shall not employ, independently contract with, or grant privileges to an individual who regularly has direct access to or provides direct services to patients or residents in the covered facility until the covered facility or staffing agency has a criminal history check conducted in compliance with this section or has received criminal history record information in compliance with subsections (3) and (10). This subsection and subsection (1) do not apply to any of the following:

(a) An individual who is employed by, under independent contract to, or granted clinical privileges in a covered facility before April 1, 2006. On or before April 1, 2011, an individual who is exempt under this subdivision and who has not been the subject of a criminal history check conducted in compliance with this section shall provide the department of state police with a set of fingerprints and the department of state police shall input those fingerprints into the automated fingerprint identification system database established under subsection (13). An individual who is exempt under this subdivision is not limited to working within the covered facility with which ~~he or she~~ **the individual** is employed by, under independent contract to, or granted clinical privileges on April 1, 2006 but may transfer to another covered facility, adult foster care facility, or mental health facility. If an individual who is exempt under this subdivision is subsequently convicted of a crime described under subsection (1)(a) to ~~(g)~~ **(d)** or found to be the subject of a substantiated finding described under subsection ~~(1)(i)~~ **(1)(f)** or an order or disposition described under subsection ~~(1)(h),~~ **(1)(e)**, or is found to have been convicted of a relevant crime, ~~described under 42 USC 1320a-7(a),~~ then ~~he or~~

~~she~~ **the individual** is no longer exempt and shall be terminated from employment or denied employment or clinical privileges.

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

(3) An individual who applies for employment either as an employee or as an independent contractor or for clinical privileges with a staffing agency or covered facility and who has not been the subject of a criminal history check conducted in compliance with this section shall give written consent at the time of application for the department of state police to conduct a criminal history check under this section, along with identification acceptable to the department of state police. If the applicant has been the subject of a criminal history check conducted in compliance with this section, the applicant shall give written consent at the time of application for the covered facility or staffing agency to obtain the criminal history record information as prescribed in subsection (4) from the relevant licensing or regulatory department and for the department of state police to conduct a criminal history check under this section if the requirements of subsection (10) are not met and a request to the Federal Bureau of

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

(4) Upon receipt of the written consent to conduct a criminal history check and identification required under subsection (3), a staffing agency or covered facility that has made a ~~good faith~~ **good-faith** offer of employment or an independent contract or clinical privileges to the applicant shall make a request to the

department of state police to conduct a criminal history check on the applicant, to input the applicant's fingerprints into the automated fingerprint identification system database, and to forward the applicant's fingerprints to the Federal Bureau of Investigation. The department of state police shall request the Federal Bureau of Investigation to make a determination of the existence of any national criminal history pertaining to the applicant. The applicant shall provide the department of state police with a set of fingerprints. The request ~~shall~~ **must** be made in a manner prescribed by the department of state police. The staffing agency or covered facility shall make the written consent and identification available to the department of state police. The staffing agency or covered facility shall make a request regarding that applicant to the relevant licensing or regulatory department to conduct a check of all relevant registries established according to federal and state law and regulations for any substantiated findings of abuse, neglect, or misappropriation of property. If the department of state police or the Federal Bureau of Investigation charges a fee for conducting the criminal history check, the staffing agency or covered facility shall pay the cost of the charge. Except as otherwise provided in this subsection, if the department of state police or the Federal Bureau of Investigation charges a fee for conducting the criminal history check, the department shall pay the cost of or reimburse the charge for a covered facility that is a home for the aged. After October 1, 2018, if the department of state police or the Federal Bureau of Investigation charges a fee for conducting the criminal history check, the department shall pay the cost of the charge up to 40 criminal history checks per year for a covered facility that is a

home for the aged with fewer than 100 beds and 50 criminal history checks per year for a home for the aged with 100 beds or more. The staffing agency or covered facility shall not seek reimbursement for a charge imposed by the department of state police or the Federal Bureau of Investigation from the individual who is the subject of the criminal history check. A prospective employee or a prospective independent contractor covered under this section may not be charged for the cost of a criminal history check required under this section. The department of state police shall conduct a criminal history check on the applicant named in the request. The department of state police shall provide the department with a written report of the criminal history check conducted under this subsection. The report ~~shall~~ **must** contain any criminal history record information on the applicant maintained by the department of state police. The department of state police shall provide the results of the Federal Bureau of Investigation determination to the department within 30 days after the request is made. If the requesting staffing agency or covered facility is not a state department or agency and if criminal history record information is disclosed on the written report of the criminal history check or the Federal Bureau of Investigation determination that resulted in a conviction, the department shall notify the staffing agency or covered facility and the applicant in writing of the type of crime disclosed on the written report of the criminal history check or the Federal Bureau of Investigation determination without disclosing the details of the crime. Any charges imposed by the department of state police or the Federal Bureau of Investigation for conducting a criminal history check or making a determination under this subsection ~~shall~~ **must** be paid in the manner required

under this subsection. The notice ~~shall~~ **must** include a statement that the applicant has a right to appeal the information relied upon by the staffing agency or covered facility in making its decision regarding ~~his or her~~ **the applicant's** employment eligibility based on the criminal history check. The notice ~~shall~~ **must** also include information regarding where to file and describing the appellate procedures established under section 20173b.

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

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

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

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

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

(*iii*) That ~~he or she~~ **the individual** has not been the subject of a substantiated finding as described in subsection ~~(1)(i).~~**(1)(f).**

(*iv*) That ~~he or she~~ **the individual** agrees that, if the

information in the criminal history check conducted under this section does not confirm the individual's statements under subparagraphs (*i*) to (*iii*), ~~his or her~~ **the individual's** employment or clinical privileges will be terminated by the covered facility as required under subsection (1) unless and until the individual appeals and can prove that the information is incorrect.

(*v*) That ~~he or she~~ **the individual** understands that the conditions described in subparagraphs (*i*) to (*iv*) may result in the termination of ~~his or her~~ **the individual's** employment or clinical privileges and that those conditions are good cause for termination.

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

(*i*) The covered facility, at its own expense and before the individual has direct access to or provides direct services to

patients or residents of the covered facility, conducts a search of public records on that individual through the internet criminal history access tool maintained by the department of state police and the results of that search do not uncover any information that would indicate that the individual is not eligible to have regular direct access to or provide direct services to patients or residents under this section.

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

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

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

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

(8) An individual who knowingly provides false information

regarding ~~his or her~~ **the individual's** identity, criminal convictions, or substantiated findings on a statement described in subsection (5)(b)(*i*) to (*iii*) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days, ~~or~~ a fine of not more than $500.00, or both.

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

(10) Upon consent of an applicant as required in subsection (3) and upon request from a staffing agency or covered facility that has made a ~~good faith~~ **good-faith** offer of employment or an independent contract or clinical privileges to the applicant, the

relevant licensing or regulatory department shall review the criminal history record information, if any, and notify the requesting staffing agency or covered facility of the information in the manner prescribed in subsection (4). Until the department of state police can participate with the Federal Bureau of Investigation's automatic notification system similar to the system required of the state police under subsection (13) and federal regulations allow the federal criminal record to be used for subsequent authorized uses, as determined in an order issued by the department, a staffing agency or covered facility may rely on the criminal history record information provided by the relevant licensing or regulatory department under this subsection and a request to the Federal Bureau of Investigation to make a subsequent determination of the existence of any national criminal history pertaining to the applicant is not necessary if all of the following requirements are met:

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

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

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

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

(a) Agree in writing to report to the staffing agency or covered facility immediately upon being arraigned for 1 or more of the criminal offenses listed in subsection (1)(a) to ~~(g),~~ **(d),** upon being convicted of 1 or more of the criminal offenses listed in subsection (1)(a) to ~~(g),~~ **(d),** upon becoming the subject of an order or disposition described under subsection ~~(1)(h),~~ **(1)(e),** and upon being the subject of a substantiated finding of neglect, abuse, or misappropriation of property as described in subsection ~~(1)(i).~~ **(1)(f).** Reporting of an arraignment under this subdivision is not cause for termination or denial of employment.

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

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

(13) The department of state police and the Federal Bureau of Investigation shall store and retain all fingerprints submitted under this section and provide for an automatic notification if and when subsequent criminal information submitted into the system matches a set of fingerprints previously submitted under this section. Upon ~~such~~ **receiving that** notification, the department of state police shall immediately notify the department and the

department shall immediately contact each respective staffing agency or covered facility with which that individual is associated. Information in the database established under this subsection is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes.

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

(15) As used in this section:

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

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

(*i*) For a crime that is not a relevant crime, a final conviction, the payment of a fine, a plea of guilty or nolo contendere if accepted by the court, or a finding of guilt for a criminal law violation or a juvenile adjudication or disposition by the juvenile division of probate court or family division of

circuit court for a violation that if committed by an adult would be a crime.

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

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

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

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

(f) "Home health agency" means a person certified by Medicare whose business is to provide to individuals in their places of residence other than in a hospital, nursing home, or county medical care facility 1 or more of the following services: ~~nursing~~

(*i*) Nursing services. ~~, therapeutic~~

(*ii*) Therapeutic services. ~~, social~~

(*iii*) Social work services. ~~, homemaker~~

(*iv*) Homemaker services. ~~, home~~

(*v*) Home health aide services. ~~, or other~~

(*vi*) Other related services.

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

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

(h) "Medicare" means benefits under the federal Medicare program established under title XVIII of the social security act, 42 USC 1395 to ~~1395*lll*.~~**1395mmm.**

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

(j) "Relevant crime" means a crime described under 42 USC 1320a-7(a), 42 USC 1320a-7(b)(1), or 42 USC 1320a-7(b)(2).

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

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

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

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

(A) The policy or procedures the individual must follow in performing ~~his or her~~ **the individual's** duties.

(B) The tasks performed by the individual.

(C) The individual's work schedule.

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

performance awards.

(E) The compensation the individual receives for performing ~~his or her~~ **the individual's** duties.

(F) The conditions under which the individual performs ~~his or her~~ **the individual's** duties.

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

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 103rd Legislature are enacted into law:

(a) House Bill No. 6402 (request no. H08122'26).

(b) House Bill No. 6400 (request no. H08123'26).