

HOUSE BILL No. 6529

October 15, 2008, Introduced by Rep. Opsommer and referred to the 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 2008 PA 123.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20173a. (1) Except as otherwise provided in subsection
2 (2), a health facility or agency that is a nursing home, county
3 medical care facility, hospice, hospital that provides swing bed
4 services, home for the aged, or home health agency shall not
5 employ, independently contract with, or grant clinical privileges
6 to an individual who regularly has direct access to or provides
7 direct services to patients or residents in the health facility or

1 agency after April 1, 2006 if the individual satisfies 1 or more of
2 the following:

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

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, unless 15 years have lapsed since
10 the individual completed all of the terms and conditions of his or
11 her sentencing, parole, and probation for that conviction prior to
12 the date of application for employment or clinical privileges or
13 the date of the execution of the independent contract:

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

19 (ii) A felony involving cruelty or torture.

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

22 (iv) A felony involving criminal sexual conduct.

23 (v) A felony involving abuse or neglect.

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

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

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

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

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

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

23 (iii) A misdemeanor involving criminal sexual conduct.

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

26 (v) A misdemeanor involving abuse or neglect.

27 (e) Has been convicted of any of the following misdemeanors,

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

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

9 (ii) A misdemeanor involving home invasion.

10 (iii) A misdemeanor involving embezzlement.

11 (iv) A misdemeanor involving negligent homicide.

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

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

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

19 (f) Has been convicted of any of the following misdemeanors,
20 other than a misdemeanor for a relevant crime described under 42
21 USC 1320a-7, or a state or federal crime that is substantially
22 similar to the misdemeanors described in this subdivision, within
23 the 3 years immediately preceding the date of application for
24 employment or clinical privileges or the date of the execution of
25 the independent contract:

26 (i) A misdemeanor for assault if there was no use of a firearm
27 or dangerous weapon and no intent to commit murder or inflict great

1 bodily injury.

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

4 (iii) A misdemeanor under part 74 unless otherwise provided
5 under subdivision (g).

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

13 (i) A misdemeanor under part 74 if the individual, at the time
14 of 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) Has been the subject of a substantiated finding of
22 neglect, abuse, or misappropriation of property by a state or
23 federal agency pursuant to an investigation conducted in accordance
24 with 42 USC 1395i-3 or 1396r.

25 (2) Except as otherwise provided in subsection (5), a health
26 facility or agency that is a nursing home, county medical care
27 facility, hospice, hospital that provides swing bed services, home

1 for the aged, or home health agency shall not employ, independently
2 contract with, or grant privileges to an individual who regularly
3 has direct access to or provides direct services to patients or
4 residents in the health facility or agency after April 1, 2006
5 until the health facility or agency conducts a criminal history
6 check in compliance with subsection (4). This subsection and
7 subsection (1) do not apply to any of the following:

8 (a) An individual who is employed by, under independent
9 contract to, or granted clinical privileges in a health facility or
10 agency before April 1, 2006. Beginning April 1, 2009, an individual
11 who is exempt under this subdivision shall provide the department
12 of state police with a set of fingerprints and the department of
13 state police shall input those fingerprints into the automated
14 fingerprint identification system database established under
15 subsection (12). An individual who is exempt under this subdivision
16 is not limited to working within the health facility or agency with
17 which he or she is employed by, under independent contract to, or
18 granted clinical privileges on April 1, 2006. That individual may
19 transfer to another health facility or agency that is under the
20 same ownership with which he or she was employed, under contract,
21 or granted privileges. If that individual wishes to transfer to
22 another health facility or agency that is not under the same
23 ownership, he or she may do so provided that a criminal history
24 check is conducted by the new health facility or agency in
25 accordance with subsection (4). If an individual who is exempt
26 under this subdivision is subsequently convicted of a crime
27 described under subsection (1)(a) to (g) or found to be the subject

1 of a substantiated finding described under subsection (1)(i) or an
2 order or disposition described under subsection (1)(h), or is found
3 to have been convicted of a relevant crime described under
4 subsection (1)(a), then he or she is no longer exempt and shall be
5 terminated from employment or denied employment.

6 (b) An individual who is an independent contractor with a
7 health facility or agency that is a nursing home, county medical
8 care facility, hospice, hospital that provides swing bed services,
9 home for the aged, or home health agency if the services for which
10 he or she is contracted is not directly related to the provision of
11 services to a patient or resident or if the services for which he
12 or she is contracted allows for direct access to the patients or
13 residents but is not performed on an ongoing basis. This exception
14 includes, but is not limited to, an individual who independently
15 contracts with the health facility or agency to provide utility,
16 maintenance, construction, or communications services.

17 **(C) A STUDENT WHO IS ENROLLED IN AN EDUCATIONAL PROGRAM**
18 **APPROVED UNDER SECTION 20912 AND WHO IS UNDER THE DIRECT**
19 **SUPERVISION OF A CLINICAL PRECEPTOR AS DEFINED IN SECTION 20902.**

20 (3) An individual who applies for employment either as an
21 employee or as an independent contractor or for clinical privileges
22 with a health facility or agency that is a nursing home, county
23 medical care facility, hospice, hospital that provides swing bed
24 services, home for the aged, or home health agency and has received
25 a good faith offer of employment, an independent contract, or
26 clinical privileges from the health facility or agency shall give
27 written consent at the time of application for the department of

1 state police to conduct an initial criminal history check under
2 this section, along with identification acceptable to the
3 department of state police.

4 (4) Upon receipt of the written consent and identification
5 required under subsection (3), a health facility or agency that is
6 a nursing home, county medical care facility, hospice, hospital
7 that provides swing bed services, home for the aged, or home health
8 agency that has made a good faith offer of employment or an
9 independent contract or clinical privileges to the applicant shall
10 make a request to the department of state police to conduct a
11 criminal history check on the applicant, to input the applicant's
12 fingerprints into the automated fingerprint identification system
13 database, and to forward the applicant's fingerprints to the
14 federal bureau of investigation. The department of state police
15 shall request the federal bureau of investigation to make a
16 determination of the existence of any national criminal history
17 pertaining to the applicant. The applicant shall provide the
18 department of state police with a set of fingerprints. The request
19 shall be made in a manner prescribed by the department of state
20 police. The health facility or agency shall make the written
21 consent and identification available to the department of state
22 police. The health facility or agency shall make a request to the
23 relevant licensing or regulatory department to conduct a check of
24 all relevant registries established pursuant to federal and state
25 law and regulations for any substantiated findings of abuse,
26 neglect, or misappropriation of property. If the department of
27 state police or the federal bureau of investigation charges a fee

1 for conducting the initial criminal history check, the charge shall
2 be paid by or reimbursed by the department with federal funds as
3 provided to implement a pilot program for national and state
4 background checks on direct patient access employees of long-term
5 care facilities or providers in accordance with section 307 of the
6 medicare prescription drug, improvement, and modernization act of
7 2003, Public Law 108-173. The health facility or agency shall not
8 seek reimbursement for a charge imposed by the department of state
9 police or the federal bureau of investigation from the individual
10 who is the subject of the initial criminal history check. A health
11 facility or agency, a prospective employee, or a prospective
12 independent contractor covered under this section may not be
13 charged for the cost of an initial criminal history check required
14 under this section. The department of state police shall conduct a
15 criminal history check on the applicant named in the request. The
16 department of state police shall provide the department with a
17 written report of the criminal history check conducted under this
18 subsection if the criminal history check contains any criminal
19 history record information. The report shall contain any criminal
20 history record information on the applicant maintained by the
21 department of state police. The department of state police shall
22 provide the results of the federal bureau of investigation
23 determination to the department within 30 days after the request is
24 made. If the requesting health facility or agency is not a state
25 department or agency and if a criminal conviction is disclosed on
26 the written report of the criminal history check or the federal
27 bureau of investigation determination, the department shall notify

1 the health facility or agency and the applicant in writing of the
2 type of crime disclosed on the written report of the criminal
3 history check or the federal bureau of investigation determination
4 without disclosing the details of the crime. Any charges imposed by
5 the department of state police or the federal bureau of
6 investigation for conducting an initial criminal history check or
7 making a determination under this subsection shall be paid in the
8 manner required under this subsection. The notice shall include a
9 statement that the applicant has a right to appeal a decision made
10 by the health facility or agency regarding his or her employment
11 eligibility based on the criminal background check. The notice
12 shall also include information regarding where to file and
13 describing the appellate procedures established under section
14 20173b.

15 (5) If a health facility or agency that is a nursing home,
16 county medical care facility, hospice, hospital that provides swing
17 bed services, home for the aged, or home health agency determines
18 it necessary to employ or grant clinical privileges to an applicant
19 before receiving the results of the applicant's criminal history
20 check under this section, the health facility or agency may
21 conditionally employ or grant conditional clinical privileges to
22 the individual if all of the following apply:

23 (a) The health facility or agency requests the criminal
24 history check under this section upon conditionally employing or
25 conditionally granting clinical privileges to the individual.

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

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

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

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

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

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

19 (6) The department shall develop and distribute a model form
20 for the statement required under subsection (5)(b). The department
21 shall make the model form available to health facilities or
22 agencies subject to this section upon request at no charge.

23 (7) If an individual is employed as a conditional employee or
24 is granted conditional clinical privileges under subsection (5),
25 and the report described in subsection (4) does not confirm the
26 individual's statement under subsection (5)(b)(i) to (iii), the
27 health facility or agency shall terminate the individual's

1 employment or clinical privileges as required by subsection (1).

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

8 (9) A health facility or agency that is a nursing home, county
9 medical care facility, hospice, hospital that provides swing bed
10 services, home for the aged, or home health agency shall use
11 criminal history record information obtained under subsection (4)
12 only for the purpose of evaluating an applicant's qualifications
13 for employment, an independent contract, or clinical privileges in
14 the position for which he or she has applied and for the purposes
15 of subsections (5) and (7). A health facility or agency or an
16 employee of the health facility or agency shall not disclose
17 criminal history record information obtained under subsection (4)
18 to a person who is not directly involved in evaluating the
19 applicant's qualifications for employment, an independent contract,
20 or clinical privileges. An individual who knowingly uses or
21 disseminates the criminal history record information obtained under
22 subsection (4) in violation of this subsection is guilty of a
23 misdemeanor punishable by imprisonment for not more than 93 days or
24 a fine of not more than \$1,000.00, or both. Upon written request
25 from another health facility or agency, psychiatric facility or
26 intermediate care facility for people with mental retardation, or
27 adult foster care facility that is considering employing,

1 independently contracting with, or granting clinical privileges to
2 an individual, a health facility or agency that has obtained
3 criminal history record information under this section on that
4 individual shall, with the consent of the applicant, share the
5 information with the requesting health facility or agency,
6 psychiatric facility or intermediate care facility for people with
7 mental retardation, or adult foster care facility. Except for a
8 knowing or intentional release of false information, a health
9 facility or agency has no liability in connection with a criminal
10 background check conducted under this section or the release of
11 criminal history record information under this subsection.

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

15 (a) Agree in writing to report to the health facility or
16 agency immediately upon being arraigned for 1 or more of the
17 criminal offenses listed in subsection (1)(a) to (g), upon being
18 convicted of 1 or more of the criminal offenses listed in
19 subsection (1)(a) to (g), upon becoming the subject of an order or
20 disposition described under subsection (1)(h), and upon being the
21 subject of a substantiated finding of neglect, abuse, or
22 misappropriation of property as described in subsection (1)(i).
23 Reporting of an arraignment under this subdivision is not cause for
24 termination or denial of employment.

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

1 (11) In addition to sanctions set forth in section 20165, a
2 licensee, owner, administrator, or operator of a nursing home,
3 county medical care facility, hospice, hospital that provides swing
4 bed services, home for the aged, or home health agency who
5 knowingly and willfully fails to conduct the criminal history
6 checks as required under this section is guilty of a misdemeanor
7 punishable by imprisonment for not more than 1 year or a fine of
8 not more than \$5,000.00, or both.

9 (12) In collaboration with the department of state police, the
10 department of information technology shall establish an automated
11 fingerprint identification system database that would allow the
12 department of state police to store and maintain all fingerprints
13 submitted under this section and would provide for an automatic
14 notification if and when a subsequent criminal arrest fingerprint
15 card submitted into the system matches a set of fingerprints
16 previously submitted in accordance with this section. Upon such
17 notification, the department of state police shall immediately
18 notify the department and the department shall immediately contact
19 the respective health facility or agency with which that individual
20 is associated. Information in the database established under this
21 subsection is confidential, is not subject to disclosure under the
22 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and
23 shall not be disclosed to any person except for purposes of this
24 act or for law enforcement purposes.

25 (13) On or before April 1, 2009, the department shall submit a
26 written report to the legislature outlining a plan to cover the
27 costs of the criminal history checks required under this section if

1 federal funding is no longer available or is inadequate to cover
2 those costs.

3 (14) The department and the department of state police shall
4 maintain an electronic web-based system to assist those health
5 facilities and agencies required to check relevant registries and
6 conduct criminal history checks of its employees and independent
7 contractors and to provide for an automated notice to those health
8 facilities or agencies for those individuals inputted in the system
9 who, since the initial check, have been convicted of a
10 disqualifying offense or have been the subject of a substantiated
11 finding of abuse, neglect, or misappropriation of property.

12 (15) As used in this section:

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

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

20 (c) "Home health agency" means a person certified by medicare
21 whose business is to provide to individuals in their places of
22 residence other than in a hospital, nursing home, or county medical
23 care facility 1 or more of the following services: nursing
24 services, therapeutic services, social work services, homemaker
25 services, home health aide services, or other related services.

26 (d) "Independent contract" means a contract entered into by a
27 health facility or agency with an individual who provides the

1 contracted services independently or a contract entered into by a
2 health facility or agency with an organization or agency that
3 employs or contracts with an individual after complying with the
4 requirements of this section to provide the contracted services to
5 the health facility or agency on behalf of the organization or
6 agency.

7 (e) "Medicare" means benefits under the federal medicare
8 program established under title XVIII of the social security act,
9 42 USC 1395 to 1395hhh.