

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 378

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 20106, 20156, 20173a, and 21311 (MCL
333.20106, 333.20156, 333.20173a, and 333.21311), section 20106 as
amended by 2015 PA 104, section 20156 as amended by 2006 PA 195,
section 20173a as amended by 2014 PA 66, and section 21311 as
amended by 2004 PA 74, and by adding sections 21302 and 21311a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20106. (1) "Health facility or agency", except as
2 provided in section 20115, means:

3 (a) An ambulance operation, aircraft transport operation,
4 nontransport prehospital life support operation, or medical first
5 response service.

1 (b) A county medical care facility.

2 (c) A freestanding surgical outpatient facility.

3 (d) A health maintenance organization.

4 (e) A home for the aged.

5 (f) A hospital.

6 (g) A nursing home.

7 (h) A hospice.

8 (i) A hospice residence.

9 (j) A facility or agency listed in subdivisions (a) to (g)
10 located in a university, college, or other educational institution.

11 (2) "Health maintenance organization" means that term as
12 defined in section 3501 of the insurance code of 1956, 1956 PA 218,
13 MCL 500.3501.

14 (3) "Home for the aged" means a supervised personal care
15 facility **AT A SINGLE ADDRESS**, other than a hotel, adult foster care
16 facility, hospital, nursing home, or county medical care facility
17 that provides room, board, and supervised personal care to 21 or
18 more unrelated, nontransient, individuals ~~60~~**55** years of age or
19 older. Home for the aged includes a supervised personal care
20 facility for 20 or fewer individuals ~~60~~**55** years of age or older if
21 the facility is operated in conjunction with and as a distinct part
22 of a licensed nursing home. Home for the aged does not include an
23 area excluded from this definition by section 17(3) of the
24 continuing care community disclosure act, 2014 PA 448, MCL 554.917.

25 (4) "Hospice" means a health care program that provides a
26 coordinated set of services rendered at home or in outpatient or
27 institutional settings for individuals suffering from a disease or

1 condition with a terminal prognosis.

2 (5) "Hospital" means a facility offering inpatient, overnight
3 care, and services for observation, diagnosis, and active treatment
4 of an individual with a medical, surgical, obstetric, chronic, or
5 rehabilitative condition requiring the daily direction or
6 supervision of a physician. Hospital does not include a mental
7 health hospital licensed or operated by the department of ~~community~~
8 health **AND HUMAN SERVICES** or a hospital operated by the department
9 of corrections.

10 (6) "Hospital long-term care unit" means a nursing care
11 facility, owned and operated by and as part of a hospital,
12 providing organized nursing care and medical treatment to 7 or more
13 unrelated individuals suffering or recovering from illness, injury,
14 or infirmity.

15 Sec. 20156. (1) A representative of the department or the
16 bureau of fire services created in section 1b of the fire
17 prevention code, 1941 PA 207, MCL 29.1b, upon presentation of
18 proper identification, may enter the premises of an applicant or
19 licensee at any reasonable time to determine whether the applicant
20 or licensee meets the requirements of this article and the rules
21 promulgated under this article. The director; the director of the
22 department of **HEALTH AND** human services; the bureau of fire
23 services; the director of the office of services to the aging; or
24 the director of a local health department; or an authorized
25 representative of the director, the director of the department of
26 **HEALTH AND** human services, the bureau of fire services, the
27 director of the office of services to the aging, or the director of

1 a local health department may enter on the premises of an applicant
2 or licensee under part 217 at any time in the course of carrying
3 out program responsibilities.

4 (2) The bureau of fire services created in section 1b of the
5 fire prevention code, 1941 PA 207, MCL 29.1b, shall enforce rules
6 promulgated by the bureau of fire services for health facilities
7 and agencies to ~~assure~~ **ENSURE** that physical facilities owned,
8 maintained, or operated by a health facility or agency are planned,
9 constructed, and maintained in a manner to protect the health,
10 safety, and welfare of patients.

11 (3) **BEGINNING ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT**
12 **ADDED THIS SUBSECTION, THE BUREAU OF FIRE SERVICES SHALL AMEND THE**
13 **RULES TO ALLOW FACILITIES IN EXISTENCE ON OR BEFORE THE EFFECTIVE**
14 **DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION AND**
15 **CONTINUOUSLY OPERATING UP TO THE TIME OF APPLICATION FOR A HOME FOR**
16 **THE AGED LICENSE TO BE REVIEWED AND INSPECTED TO COMPLY WITH THE**
17 **PROVISIONS OF CHAPTER 18 OR 19 OR CHAPTER 32 OR 33 OF THE NATIONAL**
18 **FIRE PROTECTION ASSOCIATION STANDARD NUMBER 101.**

19 (4) **AN APPLICANT UNDER SUBSECTION (3) SHALL PROVIDE**
20 **INFORMATION REQUESTED BY THE DEPARTMENT THAT ALLOWS THE DEPARTMENT**
21 **TO VERIFY THAT THE FACILITY WAS IN EXISTENCE ON OR BEFORE THE**
22 **EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION AND**
23 **HAS BEEN CONTINUOUSLY OPERATING UP TO THE TIME OF APPLICATION.**

24 (5) ~~(3)~~—The department shall not issue a license or
25 certificate to a health facility or agency until it receives an
26 appropriate certificate of approval from the bureau of fire
27 services. For purposes of this section, a decision of the bureau of

1 fire services to issue a certificate controls over that of a local
2 fire department.

3 (6) ~~(4)~~—Subsections (2), ~~and (3)~~, **(4), AND (5)** do not apply to
4 a health facility or an agency licensed under part 205 or 209.

5 Sec. 20173a. (1) Except as otherwise provided in subsection
6 (2), a covered facility shall not employ, independently contract
7 with, or grant clinical privileges to an individual who regularly
8 has direct access to or provides direct services to patients or
9 residents in the covered facility if the individual satisfies 1 or
10 more of the following:

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

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

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

1 (ii) A felony involving cruelty or torture.

2 (iii) A felony under chapter XXA of the Michigan penal code,
3 1931 PA 328, MCL 750.145m to 750.145r.

4 (iv) A felony involving criminal sexual conduct.

5 (v) A felony involving abuse or neglect.

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

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

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

18 (d) 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 10 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 involving the use of a firearm or dangerous
26 weapon with the intent to injure, the use of a firearm or dangerous
27 weapon that results in a personal injury, or a misdemeanor

1 involving the use of force or violence or the threat of the use of
2 force or violence.

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

5 (iii) A misdemeanor involving criminal sexual conduct.

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

8 (v) A misdemeanor involving abuse or neglect.

9 (e) 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(a), or a state or federal crime that is substantially
12 similar to the misdemeanors described in this subdivision, within
13 the 5 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 cruelty if committed by an
17 individual who is less than 16 years of age.

18 (ii) A misdemeanor involving home invasion.

19 (iii) A misdemeanor involving embezzlement.

20 (iv) A misdemeanor involving negligent homicide or a violation
21 of section 601d(1) of the Michigan vehicle code, 1949 PA 300, MCL
22 257.601d.

23 (v) A misdemeanor involving larceny unless otherwise provided
24 under subdivision (g).

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

27 (vii) Any other misdemeanor involving assault, fraud, theft,

1 or the possession or delivery of a controlled substance unless
2 otherwise provided under subdivision (d), (f), or (g).

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

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

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

15 (iii) A misdemeanor under part 74 unless otherwise provided
16 under subdivision (g).

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

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

26 (ii) A misdemeanor for larceny or retail fraud in the second
27 or third degree if the individual, at the time of conviction, is

1 under the age of 16.

2 (h) Is the subject of an order or disposition under section
3 16b of chapter IX of the code of criminal procedure, 1927 PA 175,
4 MCL 769.16b.

5 (i) Engages in conduct that becomes the subject of a
6 substantiated finding of neglect, abuse, or misappropriation of
7 property by a state or federal agency ~~pursuant to~~ **UNDER** an
8 investigation conducted in accordance with 42 USC 1395i-3 or 1396r.

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

19 (a) An individual who is employed by, under independent
20 contract to, or granted clinical privileges in a covered facility
21 before April 1, 2006. On or before April 1, 2011, an individual who
22 is exempt under this subdivision and who has not been the subject
23 of a criminal history check conducted in compliance with this
24 section shall provide the department of state police with a set of
25 fingerprints and the department of state police shall input those
26 fingerprints into the automated fingerprint identification system
27 database established under subsection (13). An individual who is

1 exempt under this subdivision is not limited to working within the
2 covered facility with which he or she is employed by, under
3 independent contract to, or granted clinical privileges on April 1,
4 2006 but may transfer to another covered facility, adult foster
5 care facility, or mental health facility. If an individual who is
6 exempt under this subdivision is subsequently convicted of a crime
7 described under subsection (1)(a) to (g) or found to be the subject
8 of a substantiated finding described under subsection (1)(i) or an
9 order or disposition described under subsection (1)(h), or is found
10 to have been convicted of a relevant crime described under 42 USC
11 1320a-7(a), then he or she is no longer exempt and shall be
12 terminated from employment or denied employment or clinical
13 privileges.

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

24 (3) An individual who applies for employment either as an
25 employee or as an independent contractor or for clinical privileges
26 with a staffing agency or covered facility and who has not been the
27 subject of a criminal history check conducted in compliance with

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

1 determination of the existence of any national criminal history
2 pertaining to the applicant is necessary, the covered facility or
3 staffing agency shall proceed in the manner required in subsection
4 (4). A staffing agency that employs an individual who regularly has
5 direct access to or provides direct services to patients or
6 residents under an independent contract with a covered facility
7 shall submit information regarding the criminal history check
8 conducted by the staffing agency to the covered facility that has
9 made a good faith offer of independent contract to that applicant.

10 (4) Upon receipt of the written consent to conduct a criminal
11 history check and identification required under subsection (3), a
12 staffing agency or covered facility that has made a good faith
13 offer of employment or an independent contract or clinical
14 privileges to the applicant shall make a request to the department
15 of state police to conduct a criminal history check on the
16 applicant, to input the applicant's fingerprints into the automated
17 fingerprint identification system database, and to forward the
18 applicant's fingerprints to the ~~federal bureau of~~
19 ~~investigation.~~ **FEDERAL BUREAU OF INVESTIGATION.** The department of
20 state police shall request the ~~federal bureau of investigation~~
21 **FEDERAL BUREAU OF INVESTIGATION** to make a determination of the
22 existence of any national criminal history pertaining to the
23 applicant. The applicant shall provide the department of state
24 police with a set of fingerprints. The request shall be made in a
25 manner prescribed by the department of state police. The staffing
26 agency or covered facility shall make the written consent and
27 identification available to the department of state police. The

1 staffing agency or covered facility shall make a request regarding
2 that applicant to the relevant licensing or regulatory department
3 to conduct a check of all relevant registries established pursuant
4 **ACCORDING** to federal and state law and regulations for any
5 substantiated findings of abuse, neglect, or misappropriation of
6 property. If the department of state police or the ~~federal bureau~~
7 ~~of investigation~~ **FEDERAL BUREAU OF INVESTIGATION** charges a fee for
8 conducting the criminal history check, the staffing agency or
9 covered facility shall pay the cost of the charge. ~~If~~ **EXCEPT AS**
10 **OTHERWISE PROVIDED IN THIS SUBSECTION, IF** the department of state
11 police or the ~~federal bureau of investigation~~ **FEDERAL BUREAU OF**
12 **INVESTIGATION** charges a fee for conducting the criminal history
13 check, the department shall pay the cost of or reimburse the charge
14 for a covered facility that is a home for the aged. **AFTER OCTOBER**
15 **1, 2018, IF THE DEPARTMENT OF STATE POLICE OR THE FEDERAL BUREAU OF**
16 **INVESTIGATION CHARGES A FEE FOR CONDUCTING THE CRIMINAL HISTORY**
17 **CHECK, THE DEPARTMENT SHALL PAY THE COST OF THE CHARGE UP TO 40**
18 **CRIMINAL HISTORY CHECKS PER YEAR FOR A COVERED FACILITY THAT IS A**
19 **HOME FOR THE AGED WITH FEWER THAN 100 BEDS AND 50 CRIMINAL HISTORY**
20 **CHECKS PER YEAR FOR A HOME FOR THE AGED WITH 100 BEDS OR MORE.** The
21 staffing agency or covered facility shall not seek reimbursement
22 for a charge imposed by the department of state police or the
23 ~~federal bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION**
24 from the individual who is the subject of the criminal history
25 check. A prospective employee or a prospective independent
26 contractor covered under this section may not be charged for the
27 cost of a criminal history check required under this section. The

1 department of state police shall conduct a criminal history check
2 on the applicant named in the request. The department of state
3 police shall provide the department with a written report of the
4 criminal history check conducted under this subsection. The report
5 shall contain any criminal history record information on the
6 applicant maintained by the department of state police. The
7 department of state police shall provide the results of the ~~federal~~
8 ~~bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION**
9 determination to the department within 30 days after the request is
10 made. If the requesting staffing agency or covered facility is not
11 a state department or agency and if criminal history record
12 information is disclosed on the written report of the criminal
13 history check or the ~~federal bureau of investigation~~ **FEDERAL BUREAU**
14 **OF INVESTIGATION** determination that resulted in a conviction, the
15 department shall notify the staffing agency or covered facility and
16 the applicant in writing of the type of crime disclosed on the
17 written report of the criminal history check or the ~~federal bureau~~
18 ~~of investigation~~ **FEDERAL BUREAU OF INVESTIGATION** determination
19 without disclosing the details of the crime. Any charges imposed by
20 the department of state police or the ~~federal bureau of~~
21 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** for conducting a
22 criminal history check or making a determination under this
23 subsection shall be paid in the manner required under this
24 subsection. The notice shall include a statement that the applicant
25 has a right to appeal the information relied upon by the staffing
26 agency or covered facility in making its decision regarding his or
27 her employment eligibility based on the criminal history check. The

1 notice shall also include information regarding where to file and
2 describing the appellate procedures established under section
3 20173b.

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

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

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

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

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

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

23 (iv) That he or she agrees that, if the information in the
24 criminal history check conducted under this section does not
25 confirm the individual's statements under subparagraphs (i) to
26 (iii), his or her employment or clinical privileges will be
27 terminated by the covered facility as required under subsection (1)

1 unless and until the individual appeals and can prove that the
2 information is incorrect.

3 (v) That he or she understands that the conditions described
4 in subparagraphs (i) to (iv) may result in the termination of his
5 or her employment or clinical privileges and that those conditions
6 are good cause for termination.

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

23 (i) The covered facility, at its own expense and before the
24 individual has direct access to or provides direct services to
25 patients or residents of the covered facility, conducts a search of
26 public records on that individual through the internet criminal
27 history access tool maintained by the department of state police

1 and the results of that search do not uncover any information that
2 would indicate that the individual is not eligible to have regular
3 direct access to or provide direct services to patients or
4 residents under this section.

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

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

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

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

26 (8) An individual who knowingly provides false information
27 regarding his or her identity, criminal convictions, or

1 substantiated findings on a statement described in subsection
2 (5)(b)(i) to (iii) is guilty of a misdemeanor punishable by
3 imprisonment for not more than 93 days or a fine of not more than
4 \$500.00, or both.

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

25 (10) Upon consent of an applicant as required in subsection
26 (3) and upon request from a staffing agency or covered facility
27 that has made a good faith offer of employment or an independent

1 contract or clinical privileges to the applicant, the relevant
2 licensing or regulatory department shall review the criminal
3 history record information, if any, and notify the requesting
4 staffing agency or covered facility of the information in the
5 manner prescribed in subsection (4). Until the ~~federal bureau of~~
6 ~~investigation implements an~~ **DEPARTMENT OF STATE POLICE CAN**
7 **PARTICIPATE WITH THE FEDERAL BUREAU OF INVESTIGATION'S** automatic
8 notification system similar to the system required of the state
9 police under subsection (13) and federal regulations allow the
10 federal criminal record to be used for subsequent authorized uses,
11 as determined in an order issued by the department, a staffing
12 agency or covered facility may rely on the criminal history record
13 information provided by the relevant licensing or regulatory
14 department under this subsection and a request to the ~~federal~~
15 ~~bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION** to make a
16 subsequent determination of the existence of any national criminal
17 history pertaining to the applicant is not necessary if all of the
18 following requirements are met:

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

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

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

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

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

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

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

27 ~~(13) In collaboration with the department of state police, the~~

1 ~~department of technology, management, and budget shall establish~~
2 ~~and maintain an automated fingerprint identification system~~
3 ~~database that would allow the~~ **THE** department of state police ~~to~~ **AND**
4 **THE FEDERAL BUREAU OF INVESTIGATION SHALL** store and ~~maintain~~ **RETAIN**
5 all fingerprints submitted under this section and ~~would~~ provide for
6 an automatic notification if and when a subsequent criminal arrest
7 ~~fingerprint card~~ **INFORMATION** submitted into the system matches a
8 set of fingerprints previously submitted under this section. Upon
9 such notification, the department of state police shall immediately
10 notify the department and the department shall immediately contact
11 each respective staffing agency or covered facility with which that
12 individual is associated. Information in the database established
13 under this subsection is confidential, is not subject to disclosure
14 under the freedom of information act, 1976 PA 442, MCL 15.231 to
15 15.246, and shall not be disclosed to any person except for
16 purposes of this act or for law enforcement purposes.

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

1 system under this section.

2 (15) As used in this section:

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

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

7 (i) For a crime that is not a relevant crime, a final
8 conviction, the payment of a fine, a plea of guilty or nolo
9 contendere if accepted by the court, or a finding of guilt for a
10 criminal law violation or a juvenile adjudication or disposition by
11 the juvenile division of probate court or family division of
12 circuit court for a violation that if committed by an adult would
13 be a crime.

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

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

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

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

1 information.

2 (f) "Home health agency" means a person certified by ~~medicare~~
3 **MEDICARE** whose business is to provide to individuals in their
4 places of residence other than in a hospital, nursing home, or
5 county medical care facility 1 or more of the following services:
6 nursing services, therapeutic services, social work services,
7 homemaker services, home health aide services, or other related
8 services.

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

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

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

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

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

27 (i) Determines whether the individual who has access to

1 patients or residents may provide care, treatment, or other similar
2 support service functions to patients or residents served by the
3 covered facility.

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

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

7 (B) The tasks performed by the individual.

8 (C) The individual's work schedule.

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

12 (E) The compensation the individual receives for performing
13 his or her duties.

14 (F) The conditions under which the individual performs his or
15 her duties.

16 SEC. 21302. (1) "CONTINUING CARE COMMUNITY" MEANS THAT TERM AS
17 DEFINED IN SECTION 3 OF THE CONTINUING CARE COMMUNITY DISCLOSURE
18 ACT, 2014 PA 448, MCL 554.903.

19 (2) "SUPERVISED PERSONAL CARE" MEANS THE DIRECT GUIDANCE OR
20 HANDS-ON ASSISTANCE WITH ACTIVITIES OF DAILY LIVING OFFERED BY A
21 FACILITY TO RESIDENTS OF THE FACILITY THAT INCLUDE 2 OR MORE OF THE
22 FOLLOWING SERVICES PROVIDED BY THE FACILITY TO ANY RESIDENT FOR 30
23 OR MORE CONSECUTIVE DAYS AS DOCUMENTED IN THE RESIDENT'S SERVICE
24 PLAN:

25 (A) DIRECT AND REGULAR INVOLVEMENT BY STAFF IN ASSISTING A
26 RESIDENT WITH THE ADMINISTRATION OF THE RESIDENT'S PRESCRIPTION
27 MEDICATIONS, INCLUDING DIRECT SUPERVISION OF THE RESIDENT TAKING

1 MEDICATION IN ACCORDANCE WITH THE INSTRUCTIONS OF THE RESIDENT'S
2 LICENSED HEALTH CARE PROFESSIONAL.

3 (B) HANDS-ON ASSISTANCE BY STAFF IN CARRYING OUT 2 OR MORE OF
4 THE FOLLOWING ACTIVITIES OF DAILY LIVING: EATING, TOILETING,
5 BATHING, GROOMING, DRESSING, TRANSFERRING, AND MOBILITY.

6 (C) DIRECT STAFF INVOLVEMENT IN A RESIDENT'S PERSONAL AND
7 SOCIAL ACTIVITIES OR THE USE OF DEVICES TO ENHANCE RESIDENT SAFETY
8 BY CONTROLLING RESIDENT EGRESS FROM THE FACILITY.

9 Sec. 21311. (1) ~~A~~—EXCEPT AS PROVIDED IN SECTION 21311A, A home
10 for the aged shall be licensed under this article.

11 (2) "Home for the aged" or a similar term or abbreviation
12 shall not be used to describe or refer to a health facility or
13 agency unless the health facility or agency is licensed as a home
14 for the aged by the department under this article.

15 (3) Except as otherwise provided in this subsection, a home
16 for the aged shall not admit an individual under ~~60~~—55 years of
17 age. Upon the request of a home for the aged and subject to
18 subsection (4), the director shall waive the age limitation imposed
19 by this subsection if the individual, the individual's guardian or
20 other legal representative, if appointed, and the owner, operator,
21 and governing body of the home for the aged, upon consultation with
22 the individual's physician, agree on each of the following:

23 (a) The home for the aged is capable of meeting all of the
24 individual's medical, social, and other needs as determined in the
25 individual's plan of service.

26 (b) The individual will be compatible with the other residents
27 of that home for the aged.

1 (c) The placement in that home for the aged is in the best
2 interests of the individual.

3 (4) The owner, operator, and governing body of the home for
4 the aged shall submit, with its request for a waiver, documentation
5 to the director that supports each of the points of agreement
6 necessary under subsection (3). Within 5 days after receipt of the
7 information required under this subsection, the director shall
8 determine if that documentation collectively substantiates each of
9 the points of agreement necessary under subsection (3) and approve
10 or deny the waiver. If denied, the director shall send a written
11 notice of the denial and the reasons for denial to the requesting
12 party.

13 SEC. 21311A. (1) BEGINNING ON THE EFFECTIVE DATE OF THE
14 AMENDATORY ACT THAT ADDED THIS SECTION, AN EXEMPTION FROM LICENSURE
15 AS A HOME FOR THE AGED UNDER THIS ARTICLE SHALL BE GIVEN TO AN
16 EXISTING FACILITY OR A FACILITY UNDER CONSTRUCTION IF THE
17 REQUIREMENTS OF SUBSECTION (3) ARE MET AND 1 OF THE FOLLOWING
18 APPLIES:

19 (A) THE PERSON THAT OFFERS BOARD IS NOT RELATED TO THE PERSON
20 THAT PROVIDES ROOM OR SUPERVISED PERSONAL CARE, OR BOTH.

21 (B) THE PERSON THAT PROVIDES SUPERVISED PERSONAL CARE, WHETHER
22 OR NOT RELATED TO THE PERSON THAT PROVIDES ROOM OR BOARD, OR BOTH,
23 HAS HAD A SUPERVISED PERSONAL CARE ARRANGEMENT IN EFFECT FOR AT
24 LEAST 2 CONSECUTIVE YEARS BEFORE THE DATE OF THE ATTESTATION
25 REQUIRED UNDER SUBSECTION (3) AND RESIDENTS AT THE FACILITY HAVE
26 THE OPTION TO SELECT ANY SUPERVISED PERSONAL CARE PROVIDER OF THEIR
27 CHOICE.

1 (2) AN EXEMPTION FROM LICENSURE AS A HOME FOR THE AGED UNDER
2 THIS ARTICLE SHALL BE GIVEN TO A FACILITY OR A FACILITY UNDER
3 CONSTRUCTION IF THE REQUIREMENTS OF SUBSECTION (3) ARE MET AND 1 OF
4 THE FOLLOWING APPLIES:

5 (A) THE PERSON THAT PROVIDES ROOM AND THE PERSON THAT PROVIDES
6 SUPERVISED PERSONAL CARE ARE RELATED AND THE FACILITY IS REGISTERED
7 AS A CONTINUING CARE COMMUNITY UNDER THE CONTINUING CARE COMMUNITY
8 DISCLOSURE ACT, 2014 PA 448, MCL 554.901 TO 554.993, AND INCLUDES A
9 LICENSED NURSING HOME AS PART OF THE CONTINUING CARE COMMUNITY.

10 (B) THE PERSON THAT PROVIDES ROOM AND THE PERSON THAT PROVIDES
11 SUPERVISED PERSONAL CARE ARE NOT RELATED AND RESIDENTS AT THE
12 FACILITY HAVE THE OPTION TO SELECT ANY SUPERVISED PERSONAL CARE
13 FROM A PERSON OF THEIR CHOICE.

14 (3) THE DEPARTMENT SHALL MAKE A DETERMINATION THAT A FACILITY
15 IS EXEMPT FROM LICENSURE AS A HOME FOR THE AGED UNDER THIS ARTICLE
16 IF THE OWNER, OPERATOR, OR GOVERNING BODY OF THE FACILITY SUBMITS
17 AN ATTESTATION TO THE DEPARTMENT THAT CERTIFIES THAT ALL OF THE
18 REQUIREMENTS UNDER SUBSECTION (1) (A) OR (B) OR (2) (A) OR (B) ARE
19 MET, IS SIGNED BY THE OWNER, OPERATOR, OR GOVERNING BODY FOR THE
20 FACILITY, AND INCLUDES AN ACKNOWLEDGMENT THAT THE PENALTY FOR
21 SUBMITTING A FALSE OR INACCURATE ATTESTATION IS AN ADMINISTRATIVE
22 FINE OF \$5,000.00.

23 (4) AN EXEMPTION GRANTED UNDER THIS SECTION CONTINUES TO EXIST
24 FOR A SUCCESSOR OWNER, OPERATOR, OR GOVERNING BODY IF THE SUCCESSOR
25 FILES THE ATTESTATION REQUIRED UNDER SUBSECTION (3). AN EXEMPTION
26 UNDER SUBSECTION (1) (A) OR (B) SHALL NOT BE GRANTED UNDER THIS
27 SECTION AFTER DECEMBER 31, 2019, EXCEPT TO A SUCCESSOR OWNER,

1 OPERATOR, OR GOVERNING BODY AS PROVIDED IN THIS SUBSECTION. AN
2 EXEMPTION UNDER SUBSECTION (2) (A) OR (B) IS NOT LIMITED TO AN
3 EXISTING FACILITY OR A FACILITY UNDER CONSTRUCTION ON OR BEFORE THE
4 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION AS
5 LONG AS THE REQUIREMENTS OF THIS SECTION ARE MET.

6 (5) THE DEPARTMENT SHALL ACT ON AN APPLICATION FOR EXEMPTION
7 REQUESTED UNDER THIS SECTION AS SOON AS PRACTICABLE BUT NO LATER
8 THAN 60 DAYS AFTER RECEIPT OF THE APPLICATION FOR THE EXEMPTION.

9 (6) A DENIAL OF AN APPLICATION FOR EXEMPTION, AN ISSUANCE OF A
10 FINE, OR A REVOCATION OF AN EXEMPTION IS, UPON THE APPLICANT
11 PROVIDING FURTHER INFORMATION, SUBJECT TO A REVIEW BY THE
12 DEPARTMENT OR AN APPEAL AS PROVIDED IN SECTION 1205, OR BOTH.

13 (7) AN EXEMPTION GRANTED UNDER THIS SECTION MAY BE REVOKED IF
14 THE DEPARTMENT DETERMINES 1 OF THE FOLLOWING:

15 (A) THAT THE FALSE OR INACCURATE INFORMATION PROVIDED IN THE
16 ATTESTATION WAS MATERIAL TO GRANTING THE EXEMPTION.

17 (B) THE PERSON RECEIVING THE EXEMPTION IS FOUND TO BE
18 NEGLIGENT, WHICH NEGLIGENCE RESULTS IN SERIOUS PHYSICAL INJURY,
19 DEATH OF A RESIDENT, OR SERIOUS MENTAL ANGUISH, AND THERE CONTINUES
20 TO BE A RISK TO THE HEALTH AND SAFETY OF THE RESIDENTS AT THAT
21 FACILITY.

22 (C) THE PERSON RECEIVING THE EXEMPTION DOES NOT COOPERATE IN
23 THE DEPARTMENT'S INVESTIGATION TO MAKE A DETERMINATION FOR
24 SUBSECTION (3).

25 (8) AS USED IN THIS SECTION:

26 (A) "BOARD" MEANS FOOD SERVICE PROVIDED AT A FACILITY.

27 (B) "RELATED" MEANS ANY OF THE FOLLOWING PERSONAL

1 RELATIONSHIPS BY MARRIAGE, BLOOD, OR ADOPTION: SPOUSE, CHILD,
2 PARENT, BROTHER, SISTER, GRANDPARENT, GRANDCHILD, AUNT, UNCLE,
3 STEPPARENT, STEPBROTHER, STEPSISTER, OR COUSIN. RELATED ALSO MEANS
4 AN ENTITY OWNS OR IS OWNED BY A PERSON THAT HAS A DIRECT OR
5 INDIRECT OWNERSHIP INTEREST IN ANOTHER ENTITY THAT PROVIDES A
6 COMPONENT OF OPERATIONS OR SERVICE UNDER SUBSECTIONS (1) AND (2).

7 (C) "SERIOUS MENTAL ANGUISH" MEANS DAMAGE SUFFERED BY A
8 RESIDENT THAT A PHYSICIAN, PHYSICIAN ASSISTANT, OR NURSE
9 PRACTITIONER DETERMINES CAUSED OR COULD HAVE CAUSED EXTREME
10 EMOTIONAL DISTRESS THAT RESULTED IN HOSPITALIZATION, PSYCHIATRIC
11 TREATMENT, OR DEATH OF A RESIDENT.

12 (D) "SERIOUS PHYSICAL INJURY" MEANS DAMAGE SUFFERED BY A
13 RESIDENT THAT A PHYSICIAN, PHYSICIAN ASSISTANT, OR NURSE
14 PRACTITIONER DETERMINES CAUSED OR COULD HAVE CAUSED DEATH OF A
15 RESIDENT, CAUSED THE IMPAIRMENT OF HIS OR HER BODILY FUNCTION, OR
16 CAUSED THE PERMANENT DISFIGUREMENT OF A RESIDENT.

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