

HOUSE BILL NO. 4476

March 09, 2021, Introduced by Reps. Tisdell, Anthony, Farrington, Witwer, Camilleri, Brixie, Garza, Manoogian, Bolden, Brenda Carter, Stone, Puri, Sneller, O'Neal, Kuppa, Yaroach, Pohutsky, Ellison, Scott, Aiyash, Breen, Neeley, Young, Brabec, Whitsett, Liberati, Cherry, Haadsma, Bezotte, Kahle, Lightner, Bellino, Coleman, Jones and Wozniak and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1979 PA 218, entitled
"Adult foster care facility licensing act,"
by amending sections 13, 31, and 34b (MCL 400.713, 400.731, and
400.734b), section 13 as amended by 2018 PA 557, section 31 as
amended by 1994 PA 150, and section 34b as amended by 2018 PA 558.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 13. (1) A person, partnership, corporation, association,
2 or a department or agency of the state, county, city, or other
3 political subdivision shall not establish or maintain an adult

1 foster care facility unless licensed by the department.

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

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

16 (a) The financial stability of the facility.

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

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

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

26 (e) The good moral character of the licensee or licensee
27 designee, owner, partner, director, and person responsible for the
28 daily operation of the facility. The applicant is responsible for
29 assessing the good moral character of the employees of the

1 facility. The person responsible for the daily operation of the
2 facility ~~shall~~**must** be not less than 18 years of age.

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

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

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

16 (7) A license ~~shall~~**must** be issued to a specific person for a
17 facility at a specific location and is nontransferable.

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

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

7 (a) A felony under this act or under chapter XXA of the
8 Michigan penal code, 1931 PA 328, MCL 750.145m to
9 ~~750.145r~~. **750.145s**.

10 (b) A misdemeanor under this act or under chapter XXA of the
11 Michigan penal code, 1931 PA 328, MCL 750.145m to ~~750.145r~~,
12 **750.145s**, within the 10 years immediately preceding the
13 application.

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

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

28 (11) The department may refuse to issue a license to or renew
29 the license of an applicant if the department determines that the

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

11 (a) Participates in the administration or operation of the
12 facility.

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

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

15 (d) Has contact with residents or staff on the premises of the
16 facility.

17 (e) Is employed by the facility.

18 (f) Resides in the facility.

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

25 (13) Subject to subsection (12), a person who violates
26 subsection (1) is guilty of a misdemeanor, punishable by
27 imprisonment for not more than 2 years or a fine of not more than
28 \$50,000.00, or both. A person who has been convicted of a violation
29 of subsection (1) who commits a second or subsequent violation is

1 guilty of a felony, punishable by imprisonment for not more than 5
2 years or a fine of not more than \$75,000.00, or both.

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

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

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

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

23 (16) If the department fails to issue or deny a license within
24 the time required by this section, the department shall return the
25 license fee and shall reduce the license fee for the applicant's
26 next renewal application, if any, by 15%. Failure to issue or deny
27 a license within the time period required under this section does
28 not allow the department to otherwise delay processing an
29 application. The completed application ~~shall~~**must** be placed in

1 sequence with other completed applications received at that same
2 time. The department shall not discriminate against an applicant in
3 the processing of an application based on the fact that the
4 application fee was refunded or discounted under this subsection.

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

10 (18) The department director shall submit a report by December
11 1 of each year to the standing committees and appropriations
12 subcommittees of the senate and house of representatives concerned
13 with human services issues. The department director shall include
14 all of the following information in the report concerning the
15 preceding fiscal year:

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

19 (b) The number of applications requiring a request for
20 additional information.

21 (c) The number of applications rejected.

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

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

26 (19) An applicant, if an individual, or an owner, partner, or
27 director of the applicant who has regular direct access to
28 residents or who has on-site facility operational responsibilities
29 shall give written consent at the time of original license

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

4 (a) A criminal history check.

5 (b) A criminal records check through the Federal Bureau of
6 Investigation.

7 (20) An owner, partner, or director of the applicant who has
8 regular direct access to residents or who has on-site facility
9 operational responsibilities is exempt from the requirements of
10 subsection (19) if he or she has already submitted consent
11 described in subsection (19) and were continuously affiliated with
12 a licensed adult foster care facility as an applicant, owner,
13 partner, or director.

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

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

1 charge the person on whom the criminal history check and criminal
2 records check are performed under this section a fee that does not
3 exceed the actual and reasonable cost of conducting the checks.

4 (23) Beginning March 13, 2012, if an applicant or licensee
5 designee or person described in subsection (20) applies for a
6 license or to renew a license to operate an adult foster care
7 facility and he or she or the licensee designee previously
8 underwent a criminal history check and criminal records check
9 required under subsection (19) or under section 134a of the mental
10 health code, 1974 PA 258, MCL 330.1134a, and has remained
11 continuously licensed or continuously employed under section 34b or
12 under section 20173a of the public health code, 1978 PA 368, MCL
13 333.20173a, after the criminal history check and criminal records
14 check have been performed, that person is not required to submit to
15 another criminal history check or criminal records check upon
16 renewal of the license obtained under subsection (3).

17 (24) The department of state police shall store and maintain
18 all fingerprints submitted under this act in an automated
19 fingerprint identification system database that provides for an
20 automatic notification at the time of a subsequent criminal arrest
21 fingerprint card submitted into the system that matches a set of
22 fingerprints previously submitted in accordance with this act. Upon
23 notification, the department of state police shall immediately
24 notify the department and the department shall take the appropriate
25 action.

26 (25) A licensee, licensee designee, owner, partner, or
27 director of the licensee ~~shall~~**must** not be permitted on the
28 premises of an adult foster care facility or have direct access to
29 residents or resident records if he or she has been convicted of

1 any of the following: adult abuse, neglect, or financial
 2 exploitation; or listed offenses as defined in section 2 of the sex
 3 offenders registration act, 1994 PA 295, MCL 28.722.

4 (26) An adult foster family care home or an adult foster care
 5 group home ~~shall~~**must** not be concurrently licensed as a group child
 6 care home or a family child care home.

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

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

22 (2) A person convicted of a misdemeanor under this act or
 23 under chapter XXA of the Michigan penal code, ~~Act No. 328 of the~~
 24 ~~Public Acts of 1931, being sections 1931 PA 328, MCL 750.145m to~~
 25 ~~750.145r of the Michigan Compiled Laws, shall~~ **750.145s, must** not be
 26 involved with an adult foster care facility for a period of 5 years
 27 after the conviction in any of the following ways:

28 (a) Participate in the administration or operation of the
 29 facility.

1 (b) Have a financial interest in the operation of the
2 facility.

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

4 (d) Have contact with residents or staff on the premises of
5 the facility.

6 (e) Be employed by the facility.

7 (f) Reside in the facility.

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

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

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

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

18 (d) Have contact with residents or staff on the premises of
19 the facility.

20 (e) Be employed by the facility.

21 (f) Reside in the facility.

22 Sec. 34b. (1) In addition to the restrictions prescribed in
23 sections 13, 22, and 31, and except as otherwise provided in
24 subsection (2), an adult foster care facility shall not employ or
25 independently contract with an individual who regularly has direct
26 access to or provides direct services to residents of the adult
27 foster care facility if the individual satisfies 1 or more of the
28 following:

29 (a) Has been convicted of a relevant crime described under 42

1 USC 1320a-7(a).

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

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

16 (ii) A felony involving cruelty or torture.

17 (iii) A felony under chapter XXA of the Michigan penal code,
18 1931 PA 328, MCL 750.145m to ~~750.145r~~. **750.145s.**

19 (iv) A felony involving criminal sexual conduct.

20 (v) A felony involving abuse or neglect.

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

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

25 (c) Has been convicted of a felony or an attempt or conspiracy
26 to commit a felony, other than a felony for a relevant crime
27 described under 42 USC 1320a-7(a) or a felony described under
28 subdivision (b), unless 10 years have lapsed since the individual
29 completed all of the terms and conditions of his or her sentencing,

1 parole, and probation for that conviction before the date of
 2 application for employment or the date of the execution of the
 3 independent contract.

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

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

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

18 (iii) A misdemeanor involving criminal sexual conduct.

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

21 (v) A misdemeanor involving abuse or neglect.

22 (e) Has been convicted of any of the following misdemeanors,
 23 other than a misdemeanor for a relevant crime described under 42
 24 USC 1320a-7(a), or a state or federal crime that is substantially
 25 similar to the misdemeanors described in this subdivision, within
 26 the 5 years immediately preceding the date of application for
 27 employment or the date of the execution of the independent
 28 contract:

29 (i) A misdemeanor involving cruelty if committed by an

1 individual who is less than 16 years of age.

2 (ii) A misdemeanor involving home invasion.

3 (iii) A misdemeanor involving embezzlement.

4 (iv) A misdemeanor involving negligent homicide or a violation
5 of section 601d(1) of the Michigan vehicle code, 1949 PA 300, MCL
6 257.601d.

7 (v) A misdemeanor involving larceny unless otherwise provided
8 under subdivision (g).

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

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

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

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

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

26 (iii) A misdemeanor under part 74 of the public health code,
27 1978 PA 368, MCL 333.7401 to 333.7461, unless otherwise provided
28 under subdivision (g).

29 (g) 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(a), or a state or federal crime that is substantially
3 similar to the misdemeanors described in this subdivision, within
4 the year immediately preceding the date of application for
5 employment or the date of the execution of the independent
6 contract:

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

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

13 (h) Is the subject of an order or disposition under section
14 16b of chapter IX of the code of criminal procedure, 1927 PA 175,
15 MCL 769.16b.

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

20 (2) Except as otherwise provided in this subsection or
21 subsection (6), an adult foster care facility shall not employ or
22 independently contract with an individual who has direct access to
23 residents until the adult foster care facility or staffing agency
24 has conducted a criminal history check in compliance with this
25 section or has received criminal history record information in
26 compliance with subsections (3) and (11). This subsection and
27 subsection (1) do not apply to an individual who is employed by or
28 under contract to an adult foster care facility before April 1,
29 2006. On or before April 1, 2011, an individual who is exempt under

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

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

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

(4) Upon receipt of the written consent to conduct a criminal history check and identification required under subsection (3), the adult foster care facility or staffing agency that has made a good-faith offer of employment or independent contract to the individual shall make a request to the department of state police to conduct a criminal history check on the individual and input the individual's fingerprints into the automated fingerprint identification system database, and shall make a request to the relevant licensing or regulatory department to perform 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. The request ~~shall~~**must** be made in a manner prescribed by the department of state police and the relevant licensing or regulatory department or agency. The adult foster care facility or staffing agency shall make the written consent and identification available to the department of state police and the relevant licensing or regulatory department or agency. Until June 30, 2020, if the department of state police or the Federal Bureau of Investigation charges a fee for conducting the criminal history check, the charge ~~shall~~**must** be paid by or reimbursed by the department. Until June 30, 2020, the adult foster care facility or staffing agency 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. Beginning July 1, 2020, if the department of state police or the Federal Bureau of Investigation charges a fee for conducting the criminal history check, the charge shall be paid by the adult foster care facility, the staffing agency, or the individual. The department of state police shall conduct a criminal

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

7 (5) Upon receipt of the written consent to conduct a criminal
8 history check and identification required under subsection (3), if
9 the individual has applied for employment either as an employee or
10 as an independent contractor with an adult foster care facility or
11 staffing agency, the adult foster care facility or staffing agency
12 that has made a good-faith offer of employment or independent
13 contract shall comply with subsection (4) and shall make a request
14 to the department of state police to forward the individual's
15 fingerprints to the Federal Bureau of Investigation. The department
16 of state police shall request the Federal Bureau of Investigation
17 to make a determination of the existence of any national criminal
18 history pertaining to the individual. An individual described in
19 this subsection shall provide the department of state police with a
20 set of fingerprints. The department of state police shall complete
21 the criminal history check under subsection (4) and, except as
22 otherwise provided in this subsection, provide the results of its
23 determination under subsection (4) and the results of the Federal
24 Bureau of Investigation determination to the department within 30
25 days after the request is made. If the requesting adult foster care
26 facility or staffing agency is not a state department or agency and
27 if criminal history record information is disclosed on the written
28 report of the criminal history check or the Federal Bureau of
29 Investigation determination that resulted in a conviction, the

1 department shall notify the adult foster care facility or staffing
2 agency and the individual in writing of the type of crime disclosed
3 on the written report of the criminal history check or the Federal
4 Bureau of Investigation determination without disclosing the
5 details of the crime. The notification ~~shall~~**must** inform the adult
6 foster care facility or staffing agency and the applicant regarding
7 the appeal process in section 34c and ~~shall~~**must** include a
8 statement that the individual has a right to appeal the information
9 relied upon by the adult foster care facility or staffing agency in
10 making its decision regarding his or her employment eligibility
11 based on the criminal history check. Any charges imposed by the
12 department of state police or the Federal Bureau of Investigation
13 for conducting a criminal history check or making a determination
14 under this subsection ~~shall~~**must** be paid in the manner required
15 under subsection (4).

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

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

25 (b) The individual signs a written statement indicating all of
26 the following:

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

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

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

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

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

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

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

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

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

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

23 (8) If an individual is conditionally employed under
24 subsection (6), and the information under subsection (3) or report
25 under subsection (4) or (5), if applicable, does not confirm the
26 individual's statement under subsection (6) (b) (i) to (iii), the adult
27 foster care facility shall terminate the individual's employment as
28 required by subsection (1).

29 (9) An individual who knowingly provides false information

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

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

26 (11) Upon consent of an individual as required in subsection
27 (3) and upon request from an adult foster care facility or staffing
28 agency that has made a good-faith offer of employment or an
29 independent contract to the individual, the relevant licensing or

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

16 (a) The criminal history check was conducted during the
17 immediately preceding 24-month period.

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

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

29 (12) As a condition of continued employment, each employee or

1 independent contractor shall do both of the following:

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

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

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

20 (14) In collaboration with the department of state police, the
21 department of technology, management, and budget shall establish
22 and maintain an automated fingerprint identification system
23 database that would allow the department of state police to store
24 and maintain all fingerprints submitted under this section and
25 would provide for an automatic notification at the time a
26 subsequent criminal arrest fingerprint card submitted into the
27 system matches a set of fingerprints previously submitted under
28 this section. Upon notification, the department of state police
29 shall immediately notify the department and the department shall

1 immediately contact each respective adult foster care facility or
2 staffing agency with which that individual is associated.

3 Information in the database established under this subsection is
4 confidential, is not subject to disclosure under the freedom of
5 information act, 1976 PA 442, MCL 15.231 to 15.246, and ~~shall~~**must**
6 not be disclosed to any person except for purposes of this act or
7 for law enforcement purposes.

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

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

1 system under this section.

2 (17) As used in this section:

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

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

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

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

18 (c) "Criminal history check conducted in compliance with this
19 section" includes a criminal history check conducted under this
20 section, under section 134a of the mental health code, 1974 PA 258,
21 MCL 330.1134a, or under section 20173a of the public health code,
22 1978 PA 368, MCL 333.20173a.

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

26 (e) "Home health agency" means that term as defined in section
27 20173a of the public health code, 1978 PA 368, MCL 333.20173a.

28 (f) "Independent contract" means a contract entered into by an
29 adult foster care facility with an individual who provides the

1 contracted services independently or a contract entered into by an
2 adult foster care facility with a staffing agency that complies
3 with the requirements of this section to provide the contracted
4 services to the adult foster care facility on behalf of the
5 staffing agency.

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

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

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

14 (j) "Under the adult foster care facility's control" means an
15 individual employed by or under independent contract with an adult
16 foster care facility for whom the adult foster care facility does
17 both of the following:

18 (i) Determines whether the individual who has access to
19 residents may provide care, treatment, or other similar support
20 service functions to residents served by the adult foster care
21 facility.

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

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

25 (B) The tasks performed by the individual.

26 (C) The individual's work schedule.

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

1 (E) The compensation the individual receives for performing
2 his or her duties.

3 (F) The conditions under which the individual performs his or
4 her duties.

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

7 Enacting section 2. This amendatory act does not take effect
8 unless Senate Bill No.____ or House Bill No. 4473 (request no.
9 01188'21) of the 101st Legislature is enacted into law.