

Act No. 303  
Public Acts of 2002  
Approved by the Governor  
May 10, 2002  
Filed with the Secretary of State  
May 10, 2002  
EFFECTIVE DATE: May 10, 2002

**STATE OF MICHIGAN  
91ST LEGISLATURE  
REGULAR SESSION OF 2002**

**Introduced by Rep. Birkholz**

**Reps. Adamini, Basham, Bisbee, Bishop, Bovin, Bob Brown, Cameron Brown, Rich Brown, Callahan, Cassis, Caul, Clark, Clarke, Dennis, DeRossett, DeVuyst, Faunce, Gielegem, Hardman, Howell, Jacobs, Jelinek, Ruth Johnson, Julian, Kolb, Kooiman, Kowall, Kuipers, Lemmons, Lipsey, Lockwood, Mans, McConico, Mead, Meyer, Minore, Murphy, Neumann, Newell, Pappageorge, Patterson, Pestka, Plakas, Pumford, Reeves, Richardville, Rivet, Rocca, Scranton, Shackleton, Shulman, Spade, Stewart, Tabor, Toy, Van Woerkom, Vander Roest, Vander Veen, Vear, Voorhees, Williams, Wojno, Woodward and Zelenko named co-sponsors**

# **ENROLLED HOUSE BILL No. 4057**

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," by amending the title and section 20161 (MCL 333.20161), the title as amended by 1998 PA 332 and section 20161 as amended by 2000 PA 253, and by adding section 20173.

*The People of the State of Michigan enact:*

## TITLE

An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification,

administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates.

Sec. 20161. (1) The department shall assess fees for health facility and agency licenses and certificates of need on an annual basis as provided in this article. Except as otherwise provided in this article, fees shall be paid in accordance with the following fee schedule:

- (a) Freestanding surgical outpatient facilities..... \$238.00 per facility.
- (b) Hospitals ..... \$8.28 per licensed bed.
- (c) Nursing homes, county medical care facilities, and hospital long-term care units..... \$2.20 per licensed bed.
- (d) Homes for the aged..... \$6.27 per licensed bed.
- (e) Clinical laboratories..... \$475.00 per laboratory.
- (f) Hospice residences ..... \$200.00 per license survey; and \$20.00 per licensed bed.

(g) Subject to subsection (13), quality assurance assessment fee for nongovernmentally owned nursing homes and hospital long-term care units ..... an amount resulting in not more than a 7% increase in aggregate medicaid nursing home and hospital long-term care unit payment rates, net of assessments, above the rates that were in effect on April 1, 2002.

(2) If a hospital requests the department to conduct a certification survey for purposes of title XVIII or title XIX of the social security act, the hospital shall pay a license fee surcharge of \$23.00 per bed. As used in this subsection, "title XVIII" and "title XIX" mean those terms as defined in section 20155.

(3) The base fee for a certificate of need is \$750.00 for each application. For a project requiring a projected capital expenditure of more than \$150,000.00 but less than \$1,500,000.00, an additional fee of \$2,000.00 shall be added to the base fee. For a project requiring a projected capital expenditure of \$1,500,000.00 or more, an additional fee of \$3,500.00 shall be added to the base fee.

(4) If licensure is for more than 1 year, the fees described in subsection (1) are multiplied by the number of years for which the license is issued, and the total amount of the fees shall be collected in the year in which the license is issued.

(5) Fees described in this section are payable to the department at the time an application for a license, permit, or certificate is submitted. If an application for a license, permit, or certificate is denied or if a license, permit, or certificate is revoked before its expiration date, the department shall not refund fees paid to the department.

(6) The fee for a provisional license or temporary permit is the same as for a license. A license may be issued at the expiration date of a temporary permit without an additional fee for the balance of the period for which the fee was paid if the requirements for licensure are met.

(7) The department may charge a fee to recover the cost of purchase or production and distribution of proficiency evaluation samples that are supplied to clinical laboratories pursuant to section 20521(3).

(8) In addition to the fees imposed under subsection (1), a clinical laboratory shall submit a fee of \$25.00 to the department for each reissuance during the licensure period of the clinical laboratory's license.

(9) Except for the licensure of clinical laboratories, not more than half the annual cost of licensure activities as determined by the department shall be provided by license fees.

(10) The application fee for a waiver under section 21564 is \$200.00 plus \$40.00 per hour for the professional services and travel expenses directly related to processing the application. The travel expenses shall be calculated in accordance with the state standardized travel regulations of the department of management and budget in effect at the time of the travel.

(11) An applicant for licensure or renewal of licensure under part 209 shall pay the applicable fees set forth in part 209.

(12) The fees collected under this section shall be deposited in the state treasury, to the credit of the general fund.

(13) The quality assurance assessment fee collected under subsection (1)(g) and all federal matching funds attributed to that fee shall be used only for the following purposes and under the following specific circumstances:

(a) The quality assurance assessment fee and all federal matching funds attributed to that fee shall be used to maintain the increased per diem medicaid reimbursement rate increases as provided for in subdivision (e). Only licensed nursing homes and hospital long-term care units that are assessed the quality assurance assessment fee and participate in the medicaid program are eligible for increased per diem medicaid reimbursement rates under this subdivision.

(b) The quality assurance assessment fee shall be implemented on the effective date of the amendatory act that added this subsection.

(c) The quality assurance assessment fee is based on the number of licensed nursing home beds and the number of licensed hospital long-term care unit beds in existence on July 1 of each year, shall be assessed upon implementation pursuant to subdivision (b) and subsequently on October 1 of each following year, and is payable on a quarterly basis, the first payment due 90 days after the date the fee is assessed.

(d) Beginning October 1, 2007, the department shall no longer assess or collect the quality assurance assessment fee or apply for federal matching funds.

(e) Upon implementation pursuant to subdivision (b), the department of community health shall increase the per diem nursing home medicaid reimbursement rates for the balance of that year. For each subsequent year in which the quality assurance assessment fee is assessed and collected, the department of community health shall maintain the medicaid nursing home reimbursement payment increase financed by the quality assurance assessment fee.

(f) The department of community health shall implement this section in a manner that complies with federal requirements necessary to assure that the quality assurance assessment fee qualifies for federal matching funds.

(g) If a nursing home or a hospital long-term care unit fails to pay the assessment required by subsection (1)(g), the department of community health may assess the nursing home or hospital long-term care unit a penalty of 5% of the assessment for each month that the assessment and penalty are not paid up to a maximum of 50% of the assessment. The department of community health may also refer for collection to the department of treasury past due amounts consistent with section 13 of 1941 PA 122, MCL 205.13.

(h) The medicaid nursing home quality assurance assessment fund is established in the state treasury. The department of community health shall deposit the revenue raised through the quality assurance assessment fee with the state treasurer for deposit in the medicaid nursing home quality assurance assessment fund.

(i) Neither the department of consumer and industry services nor the department of community health shall implement this subsection in a manner that conflicts with 42 U.S.C. 1396b(w).

(j) The quality assurance assessment fee collected under subsection (1)(g) shall be prorated on a quarterly basis for any licensed beds added to or subtracted from a nursing home or hospital long-term care unit since the immediately preceding July 1. Any adjustments in payments are due on the next quarterly installment due date.

(k) In each fiscal year governed by this subsection, medicaid reimbursement rates shall not be reduced below the medicaid reimbursement rates in effect on April 1, 2002 as a direct result of the quality assurance assessment fee collected under subsection (1)(g).

(l) The amounts listed in this subdivision are appropriated for the department of community health, subject to the conditions set forth in this subsection, for the fiscal year ending September 30, 2003:

**MEDICAL SERVICES**

Long-term care services.....	\$ 1,469,003,900
Gross appropriation.....	\$ 1,469,003,900
Appropriated from:	
Federal revenues:	
Total federal revenues.....	814,122,200
Special revenue funds:	
Medicaid quality assurance assessment.....	44,829,000
Total local revenues.....	8,445,100
State general fund/general purpose.....	\$ 601,607,600

(14) As used in this section, “medicaid” means that term as defined in section 22207.

Sec. 20173. (1) Except as otherwise provided in subsection (2), a health facility or agency that is a nursing home, county medical care facility, or home for the aged shall not employ, independently contract with, or grant clinical privileges to an individual who regularly provides direct services to patients or residents in the health facility or agency after the effective date of the amendatory act that added this section if the individual has been convicted of 1 or more of the following:

(a) A felony or an attempt or conspiracy to commit a felony within the 15 years immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract.

(b) A misdemeanor involving abuse, neglect, assault, battery, or criminal sexual conduct or involving fraud or theft against a vulnerable adult as that term is defined in section 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m, or a state or federal crime that is substantially similar to a misdemeanor described in this subdivision, within the 10 years immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract.

(2) Except as otherwise provided in this subsection and subsection (5), a health facility or agency that is a nursing home, county medical care facility, or home for the aged shall not employ, independently contract with, or grant privileges to an individual who regularly provides direct services to patients or residents in the health facility or agency after the effective date of the amendatory act that added this section until the health facility or agency complies with subsection (4) or (5), or both. This subsection and subsection (1) do not apply to an individual who is employed by, under independent contract to, or granted clinical privileges in a health facility or agency before the effective date of the amendatory act that added this section.

(3) An individual who applies for employment either as an employee or as an independent contractor or for clinical privileges with a health facility or agency that is a nursing home, county medical care facility, or home for the aged and has received a good faith offer of employment, an independent contract, or clinical privileges from the health facility or agency shall give written consent at the time of application for the department of state police to conduct a criminal history check under subsection (4) or (5), or both, along with identification acceptable to the department of state police. If the department of state police has conducted a criminal history check on the applicant within the 24 months immediately preceding the date of application and the applicant provides written consent for the release of information for the purposes of this section, the health facility or agency may use a copy of the results of that criminal history check instead of obtaining written consent and requesting a new criminal history check under this subsection, and under subsections (4) and (5), or both. If the applicant is using a prior criminal history check as described in this subsection, the health facility or agency shall accept the copy of the results of the criminal history check only from the health facility or agency or adult foster care facility that previously employed or granted clinical privileges to the applicant or from the firm or agency that independently contracts with the applicant.

(4) Upon receipt of the written consent and identification required under subsection (3), if an applicant has resided in this state for 3 or more years preceding the good faith offer of employment, an independent contract, or clinical privileges, a health facility or agency that is a nursing home, county medical care facility, or home for the aged that has made a good faith offer of employment or an independent contract or clinical privileges to the applicant shall make a request to the department of state police to conduct a criminal history check on the applicant. The request shall be made in a manner prescribed by the department of state police. The health facility or agency shall make the written consent and identification available to the department of state police. If there is a charge for conducting the criminal history check, the health facility or agency requesting the criminal history check shall pay the cost of the charge. The health facility or agency shall not seek reimbursement for the charge from the individual who is the subject of the criminal history check. The department of state police shall conduct a criminal history check on the applicant named in the request. The department of state police shall provide the health facility or agency with a written report of the criminal history check conducted under this subsection. The report shall contain any criminal history record information on the applicant maintained by the department of state police. As a condition of employment, an applicant shall sign a written statement that he or she has been a resident of this state for 3 or more years preceding the good faith offer of employment, independent contract, or clinical privileges.

(5) Upon receipt of the written consent and identification required under subsection (3), if an applicant has resided in this state for less than 3 years preceding the good faith offer of employment, an independent contract, or clinical privileges, a health facility or agency that is a nursing home, county medical care facility, or home for the aged that has made a good faith offer described in this subsection to the applicant shall comply with subsection (4) and shall make a request to the department of state police to forward the applicant's fingerprints to the federal bureau of investigation. The department of state police shall request the federal bureau of investigation to make a determination of the existence of any national criminal history pertaining to the applicant. An applicant described in this subsection shall provide the department of state police with 2 sets of fingerprints. The department of state police shall complete the criminal history check under subsection (4) and, except as otherwise provided in this subsection, provide the results of

its determination under subsection (4) to the health facility or agency and the results of the federal bureau of investigation determination to the department of consumer and industry services within 30 days after the request is made. If the requesting health facility or agency is not a state department or agency and if a crime is disclosed on the federal bureau of investigation determination, the department shall notify the health facility or agency in writing of the type of crime disclosed on the federal bureau of investigation determination without disclosing the details of the crime. Any charges for fingerprinting or a federal bureau of investigation determination under this subsection shall be paid in the manner required under subsection (4).

(6) If a health facility or agency that is a nursing home, county medical care facility, or home for the aged determines it necessary to employ or grant clinical privileges to an applicant before receiving the results of the applicant's criminal history check under subsection (4) or (5), or both, the health facility or agency may conditionally employ or grant conditional clinical privileges to the individual if all of the following apply:

(a) The health facility or agency requests the criminal history check under subsection (4) or (5), or both, upon conditionally employing or conditionally granting clinical privileges to the individual.

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

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

(ii) The individual agrees that, if the information in the criminal history check conducted under subsection (4) or (5), or both, does not confirm the individual's statement under subparagraph (i), his or her employment or clinical privileges will be terminated by the health facility or agency as required under subsection (1) unless and until the individual can prove that the information is incorrect. The health facility or agency shall provide a copy of the results of the criminal history check conducted under subsection (4) or (5), or both, to the applicant upon request.

(iii) That he or she understands the conditions described in subparagraphs (i) and (ii) that result in the termination of his or her employment or clinical privileges and that those conditions are good cause for termination.

(7) On the effective date of the amendatory act that added this section, the department shall develop and distribute a model form for the statement required under subsection (6)(b). The department shall make the model form available to health facilities or agencies subject to this section upon request at no charge.

(8) If an individual is employed as a conditional employee or is granted conditional clinical privileges under subsection (6), and the report described in subsection (4) or (5), or both, does not confirm the individual's statement under subsection (6)(b)(i), the health facility or agency shall terminate the individual's employment or clinical privileges as required by subsection (1).

(9) An individual who knowingly provides false information regarding criminal convictions on a statement described in subsection (6)(b)(i) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both.

(10) A health facility or agency that is a nursing home, county medical care facility, or home for the aged shall use criminal history record information obtained under subsection (4), (5), or (6) only for the purpose of evaluating an applicant's qualifications for employment, an independent contract, or clinical privileges in the position for which he or she has applied and for the purposes of subsections (6) and (8). A health facility or agency or an employee of the health facility or agency shall not disclose criminal history record information obtained under subsection (4) or (5) to a person who is not directly involved in evaluating the applicant's qualifications for employment, an independent contract, or clinical privileges. Upon written request from another health facility or agency or adult foster care facility that is considering employing, independently contracting with, or granting clinical privileges to an individual, a health facility or agency that has obtained criminal history record information under this section on that individual shall share the information with the requesting health facility or agency or adult foster care facility. Except for a knowing or intentional release of false information, a health facility or agency has no liability in connection with a criminal background check conducted under this section or the release of criminal history record information under this subsection.

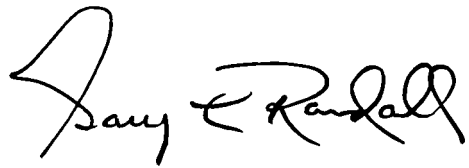
(11) As a condition of continued employment, each employee, independent contractor, or individual granted clinical privileges shall agree in writing to report to the health facility or agency immediately upon being arrested for or convicted of 1 or more of the criminal offenses listed in subsection (1)(a) and (b).

(12) As used in this section:

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

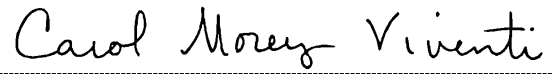
(b) "Independent contract" means a contract entered into by a health facility or agency with an individual who provides the contracted services independently or a contract entered into by a health facility or agency with an organization or agency that employs or contracts with an individual after complying with the requirements of this section to provide the contracted services to the health facility or agency on behalf of the organization or agency.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives.



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Secretary of the Senate.

Approved .....

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Governor.