

SENATE BILL No. 1253

April 13, 2010, Introduced by Senators BIRKHOLZ and STAMAS and referred to the Committee on Families and Human Services.

A bill to amend 1978 PA 368, entitled "Public health code," by amending section 20173a (MCL 333.20173a), as amended by 2008 PA 444.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20173a. (1) Except as otherwise provided in subsection
2 (2), a ~~health-COVERED facility or agency that is a nursing home,~~
3 ~~county medical care facility, hospice, hospital that provides swing~~
4 ~~bed services, home for the aged, or home health agency~~ shall not
5 employ, independently contract with, or grant clinical privileges
6 to an individual who regularly has direct access to or provides
7 direct services to patients or residents in the ~~health-COVERED~~
8 ~~facility or agency after April 1, 2006~~ if the individual satisfies

1 1 or more of the following:

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

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

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

19 (ii) A felony involving cruelty or torture.

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

22 (iv) A felony involving criminal sexual conduct.

23 (v) A felony involving abuse or neglect.

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

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

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

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

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

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

23 (iii) A misdemeanor involving criminal sexual conduct.

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

26 (v) A misdemeanor involving abuse or neglect.

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

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

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

9 (ii) A misdemeanor involving home invasion.

10 (iii) A misdemeanor involving embezzlement.

11 (iv) A misdemeanor involving negligent homicide or, **BEGINNING**
12 **OCTOBER 31, 2010**, a violation of section 601d(1) of the Michigan
13 vehicle code, 1949 PA 300, MCL 257.601d.

14 (v) A misdemeanor involving larceny unless otherwise provided
15 under subdivision (g).

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

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

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

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

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

6 (iii) A misdemeanor under part 74 unless otherwise provided
7 under subdivision (g).

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

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

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

20 (h) Is the subject of an order or disposition under section
21 16b of chapter IX of the code of criminal procedure, 1927 PA 175,
22 MCL 769.16b.

23 (i) ~~Has been~~ **ENGAGES IN CONDUCT THAT BECOMES** the subject of a
24 substantiated finding of neglect, abuse, or misappropriation of
25 property by a state or federal agency pursuant to an investigation
26 conducted in accordance with 42 USC 1395i-3 or 1396r.

27 (2) Except as otherwise provided in **THIS SUBSECTION OR**

1 subsection (5), a ~~health~~ **COVERED** facility ~~or agency that is a~~
2 ~~nursing home, county medical care facility, hospice, hospital that~~
3 ~~provides swing bed services, home for the aged, or home health~~
4 ~~agency~~ shall not employ, independently contract with, or grant
5 privileges to an individual who regularly has direct access to or
6 provides direct services to patients or residents in the ~~health~~
7 **COVERED** facility ~~or agency after April 1, 2006 until the health~~
8 **COVERED** facility or **STAFFING** agency ~~conducts~~ **HAS** a criminal history
9 check **CONDUCTED** in compliance with ~~subsection (4)~~ **THIS SECTION OR**
10 **HAS RECEIVED CRIMINAL HISTORY RECORD INFORMATION IN COMPLIANCE WITH**
11 **SUBSECTIONS (3) AND (10)**. This subsection and subsection (1) do not
12 apply to any of the following:

13 (a) An individual who is employed by, under independent
14 contract to, or granted clinical privileges in a ~~health~~ **COVERED**
15 facility ~~or agency before April 1, 2006. Beginning~~ **ON OR BEFORE**
16 April 1, 2011, an individual who is exempt under this subdivision
17 **AND WHO HAS NOT BEEN THE SUBJECT OF A CRIMINAL HISTORY CHECK**
18 **CONDUCTED IN COMPLIANCE WITH THIS SECTION** shall provide the
19 department of state police with a set of fingerprints and the
20 department of state police shall input those fingerprints into the
21 automated fingerprint identification system database established
22 under ~~subsection (12)~~ **(13)**. An individual who is exempt under this
23 subdivision is not limited to working within the ~~health~~ **COVERED**
24 facility ~~or agency~~ with which he or she is employed by, under
25 independent contract to, or granted clinical privileges on April 1,
26 2006 ~~. That individual~~ **BUT** may transfer to another ~~health~~ **COVERED**
27 facility. ~~or agency that is under the same ownership with which he~~

1 ~~or she was employed, under contract, or granted privileges. If that~~
2 ~~individual wishes to transfer to another health facility or agency~~
3 ~~that is not under the same ownership, he or she may do so provided~~
4 ~~that a criminal history check is conducted by the new health~~
5 ~~facility or agency in accordance with subsection (4).~~ If an
6 individual who is exempt under this subdivision is subsequently
7 convicted of a crime described under subsection (1)(a) to (g) or
8 found to be the subject of a substantiated finding described under
9 subsection (1)(i) or an order or disposition described under
10 subsection (1)(h), or is found to have been convicted of a relevant
11 crime described under ~~subsection (1)(a)~~ **42 USC 1320A-7(A)**, then he
12 or she is no longer exempt and shall be terminated from employment
13 or denied employment **OR CLINICAL PRIVILEGES.**

14 (b) An individual who is **UNDER** an independent ~~contractor~~
15 **CONTRACT** with a ~~health~~ **COVERED** facility ~~or agency that is a nursing~~
16 ~~home, county medical care facility, hospice, hospital that provides~~
17 ~~swing bed services, home for the aged, or home health agency if~~ **HE**
18 **OR SHE IS NOT UNDER THE FACILITY'S CONTROL AND** the services for
19 which he or she is contracted are not directly related to the
20 provision of services to a patient or resident or if the services
21 for which he or she is contracted allow for direct access to the
22 patients or residents but are not performed on an ongoing basis.
23 This exception includes, but is not limited to, an individual who
24 ~~independently contracts~~ **IS UNDER AN INDEPENDENT CONTRACT** with the
25 ~~health~~ **COVERED** facility ~~or agency~~ to provide utility, maintenance,
26 construction, or communications services.

27 (3) An individual who applies for employment either as an

1 employee or as an independent contractor or for clinical privileges
2 with a health ~~STAFFING AGENCY OR COVERED~~ facility ~~or agency that is~~
3 ~~a nursing home, county medical care facility, hospice, hospital~~
4 ~~that provides swing bed services, home for the aged, or home health~~
5 ~~agency and WHO has received a good faith offer of employment, an~~
6 ~~independent contract, or clinical privileges from the health~~
7 ~~facility or agency~~ **NOT BEEN THE SUBJECT OF A CRIMINAL HISTORY CHECK**
8 **CONDUCTED IN COMPLIANCE WITH THIS SECTION** shall give written
9 consent at the time of application for the department of state
10 police to conduct ~~an initial~~ **A** criminal history check under this
11 section, along with identification acceptable to the department of
12 state police. **IF THE APPLICANT HAS BEEN THE SUBJECT OF A CRIMINAL**
13 **HISTORY CHECK CONDUCTED IN COMPLIANCE WITH THIS SECTION, THE**
14 **APPLICANT SHALL GIVE WRITTEN CONSENT AT THE TIME OF APPLICATION FOR**
15 **THE COVERED FACILITY OR STAFFING AGENCY TO OBTAIN THE CRIMINAL**
16 **HISTORY RECORD INFORMATION AS PRESCRIBED IN SUBSECTION (4) FROM THE**
17 **RELEVANT LICENSING OR REGULATORY DEPARTMENT AND FOR THE DEPARTMENT**
18 **OF STATE POLICE TO CONDUCT A CRIMINAL HISTORY CHECK UNDER THIS**
19 **SECTION IF THE REQUIREMENTS OF SUBSECTION (10) ARE NOT MET AND A**
20 **REQUEST TO THE FEDERAL BUREAU OF INVESTIGATION TO MAKE A**
21 **DETERMINATION OF THE EXISTENCE OF ANY NATIONAL CRIMINAL HISTORY**
22 **PERTAINING TO THE APPLICANT IS NECESSARY, ALONG WITH IDENTIFICATION**
23 **ACCEPTABLE TO THE DEPARTMENT OF STATE POLICE. UPON RECEIPT OF THE**
24 **WRITTEN CONSENT TO OBTAIN THE CRIMINAL HISTORY RECORD INFORMATION**
25 **AND IDENTIFICATION REQUIRED UNDER THIS SUBSECTION, THE STAFFING**
26 **AGENCY OR COVERED FACILITY THAT HAS MADE A GOOD FAITH OFFER OF**
27 **EMPLOYMENT OR AN INDEPENDENT CONTRACT OR CLINICAL PRIVILEGES TO THE**

1 APPLICANT SHALL REQUEST THE CRIMINAL HISTORY RECORD INFORMATION
2 FROM THE RELEVANT LICENSING OR REGULATORY DEPARTMENT AND SHALL MAKE
3 A REQUEST REGARDING THAT APPLICANT TO THE RELEVANT LICENSING OR
4 REGULATORY DEPARTMENT TO CONDUCT A CHECK OF ALL RELEVANT REGISTRIES
5 IN THE MANNER REQUIRED IN SUBSECTION (4). IF THE REQUIREMENTS OF
6 SUBSECTION (10) ARE NOT MET AND A REQUEST TO THE FEDERAL BUREAU OF
7 INVESTIGATION TO MAKE A SUBSEQUENT DETERMINATION OF THE EXISTENCE
8 OF ANY NATIONAL CRIMINAL HISTORY PERTAINING TO THE APPLICANT IS
9 NECESSARY, THE COVERED FACILITY OR STAFFING AGENCY SHALL PROCEED IN
10 THE MANNER REQUIRED IN SUBSECTION (4). A STAFFING AGENCY THAT
11 EMPLOYS AN INDIVIDUAL WHO REGULARLY HAS DIRECT ACCESS TO OR
12 PROVIDES DIRECT SERVICES TO PATIENTS OR RESIDENTS UNDER AN
13 INDEPENDENT CONTRACT WITH A COVERED FACILITY SHALL SUBMIT
14 INFORMATION REGARDING THE CRIMINAL HISTORY CHECK CONDUCTED BY THE
15 STAFFING AGENCY TO THE COVERED FACILITY THAT HAS MADE A GOOD FAITH
16 OFFER OF INDEPENDENT CONTRACT TO THAT APPLICANT.

17 (4) Upon receipt of the written consent TO CONDUCT A CRIMINAL
18 HISTORY CHECK and identification required under subsection (3), a
19 ~~health STAFFING AGENCY OR COVERED facility or agency that is a~~
20 ~~nursing home, county medical care facility, hospice, hospital that~~
21 ~~provides swing bed services, home for the aged, or home health~~
22 ~~agency that has made a good faith offer of employment or an~~
23 independent contract or clinical privileges to the applicant shall
24 make a request to the department of state police to conduct a
25 criminal history check on the applicant, to input the applicant's
26 fingerprints into the automated fingerprint identification system
27 database, and to forward the applicant's fingerprints to the

1 federal bureau of investigation. The department of state police
2 shall request the federal bureau of investigation to make a
3 determination of the existence of any national criminal history
4 pertaining to the applicant. The applicant shall provide the
5 department of state police with a set of fingerprints. The request
6 shall be made in a manner prescribed by the department of state
7 police. The ~~health~~-**STAFFING AGENCY OR COVERED** facility ~~or agency~~
8 shall make the written consent and identification available to the
9 department of state police. The ~~health~~-**STAFFING AGENCY OR COVERED**
10 facility ~~or agency~~ shall make a request **REGARDING THAT APPLICANT** to
11 the relevant licensing or regulatory department to conduct a check
12 of all relevant registries established pursuant to federal and
13 state law and regulations for any substantiated findings of abuse,
14 neglect, or misappropriation of property. If the department of
15 state police or the federal bureau of investigation charges a fee
16 for conducting the ~~initial~~-criminal history check, a ~~health~~-**THE**
17 **STAFFING AGENCY OR COVERED** facility ~~or agency~~ that is a nursing
18 home, county medical care facility, hospice, hospital that provides
19 swing bed services, or home health agency shall pay the cost of the
20 charge. If the department of state police or the federal bureau of
21 investigation charges a fee for conducting the ~~initial~~-criminal
22 history check, the **RELEVANT LICENSING OR REGULATORY** department
23 shall pay the cost of or reimburse the charge for a ~~health~~-**COVERED**
24 facility ~~or agency~~ that is a home for the aged **OR ADULT FOSTER CARE**
25 **FACILITY**. The ~~health~~-**STAFFING AGENCY OR COVERED** facility ~~or agency~~
26 shall not seek reimbursement for a charge imposed by the department
27 of state police or the federal bureau of investigation from the

1 individual who is the subject of the ~~initial~~ criminal history
2 check. A prospective employee or a prospective independent
3 contractor covered under this section may not be charged for the
4 cost of ~~an initial~~ **A** criminal history check required under this
5 section. The department of state police shall conduct a criminal
6 history check on the applicant named in the request. The department
7 of state police shall provide the **RELEVANT LICENSING OR REGULATORY**
8 department with a written report of the criminal history check
9 conducted under this subsection. ~~if the criminal history check~~
10 ~~contains any criminal history record information.~~ The report shall
11 contain any criminal history record information on the applicant
12 maintained by the department of state police. The department of
13 state police shall provide the results of the federal bureau of
14 investigation determination to the **RELEVANT LICENSING OR REGULATORY**
15 department within 30 days after the request is made. If the
16 requesting ~~health~~ **STAFFING AGENCY OR COVERED** facility ~~or agency~~ is
17 not a state department or agency and if ~~a criminal conviction~~
18 **HISTORY RECORD INFORMATION** is disclosed on the written report of
19 the criminal history check or the federal bureau of investigation
20 determination **THAT RESULTED IN A CONVICTION**, the **RELEVANT LICENSING**
21 **OR REGULATORY** department shall notify the ~~health~~ **STAFFING AGENCY OR**
22 **COVERED** facility ~~or agency~~ and the applicant in writing of the type
23 of crime disclosed on the written report of the criminal history
24 check or the federal bureau of investigation determination without
25 disclosing the details of the crime. Any charges imposed by the
26 department of state police or the federal bureau of investigation
27 for conducting ~~an initial~~ **A** criminal history check or making a

1 determination under this subsection shall be paid in the manner
2 required under this subsection. The notice shall include a
3 statement that the applicant has a right to appeal a ~~decision made~~
4 **THE INFORMATION RELIED UPON** by the ~~health-STAFFING AGENCY OR~~
5 **COVERED** facility ~~or agency~~ **IN MAKING ITS DECISION** regarding his or
6 her employment eligibility based on the criminal ~~background~~ **HISTORY**
7 check. The notice shall also include information regarding where to
8 file and describing the appellate procedures established under
9 section 20173b.

10 (5) If a ~~health-COVERED~~ facility ~~or agency that is a nursing~~
11 ~~home, county medical care facility, hospice, hospital that provides~~
12 ~~swing bed services, home for the aged, or home health agency~~
13 determines it necessary to employ or grant clinical privileges to
14 an applicant before receiving the results of the applicant's
15 criminal history check **OR CRIMINAL HISTORY RECORD INFORMATION** under
16 this section, the ~~health-COVERED~~ facility ~~or agency~~ may
17 conditionally employ or grant conditional clinical privileges to
18 the individual if all of the following apply:

19 (a) The ~~health-COVERED~~ facility ~~or agency~~ requests the
20 criminal history check **OR CRIMINAL HISTORY RECORD INFORMATION** under
21 this section upon conditionally employing or conditionally granting
22 clinical privileges to the individual.

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

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

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

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

16 **(C) THE COVERED FACILITY DOES NOT PERMIT THE INDIVIDUAL TO**
17 **HAVE REGULAR DIRECT ACCESS TO OR PROVIDE DIRECT SERVICES TO**
18 **PATIENTS OR RESIDENTS IN THE COVERED FACILITY WITHOUT SUPERVISION**
19 **UNTIL THE CRIMINAL HISTORY CHECK OR CRIMINAL HISTORY RECORD**
20 **INFORMATION IS OBTAINED AND THE INDIVIDUAL IS ELIGIBLE FOR THAT**
21 **EMPLOYMENT OR CLINICAL PRIVILEGES. THE COVERED FACILITY SHALL**
22 **PROVIDE ON-SITE SUPERVISION OF AN INDIVIDUAL IN THE FACILITY ON A**
23 **CONDITIONAL BASIS UNDER THIS SUBSECTION BY AN INDIVIDUAL WHO HAS**
24 **UNDERGONE A CRIMINAL HISTORY CHECK CONDUCTED IN COMPLIANCE WITH**
25 **THIS SECTION.**

26 (6) The department shall develop and distribute a model form
27 for the statement required under subsection (5)(b). The department

1 shall make the model form available to ~~health-COVERED~~ facilities ~~or~~
2 ~~agencies subject to this section~~ upon request at no charge.

3 (7) If an individual is employed as a conditional employee or
4 is granted conditional clinical privileges under subsection (5),
5 and the **INFORMATION UNDER SUBSECTION (3) OR** report ~~described in~~
6 **UNDER** subsection (4) does not confirm the individual's statement
7 under subsection (5) (b) (i) to (iii), the ~~health-COVERED~~ facility ~~or~~
8 ~~agency~~ shall terminate the individual's employment or clinical
9 privileges as required by subsection (1).

10 (8) An individual who knowingly provides false information
11 regarding his or her identity, criminal convictions, or
12 substantiated findings on a statement described in subsection
13 (5) (b) (i) to (iii) is guilty of a misdemeanor punishable by
14 imprisonment for not more than 93 days or a fine of not more than
15 \$500.00, or both.

16 (9) A ~~health-STAFFING AGENCY OR COVERED~~ facility ~~or agency~~
17 ~~that is a nursing home, county medical care facility, hospice,~~
18 ~~hospital that provides swing bed services, home for the aged, or~~
19 ~~home health agency~~ shall use criminal history record information
20 obtained under subsection **(3) OR** (4) only for the purpose of
21 evaluating an applicant's qualifications for employment, an
22 independent contract, or clinical privileges in the position for
23 which he or she has applied and for the purposes of subsections (5)
24 and (7). A ~~health-STAFFING AGENCY OR COVERED~~ facility ~~or agency~~ ~~or~~
25 an employee of the ~~health-STAFFING AGENCY OR COVERED~~ facility ~~or~~
26 ~~agency~~ shall not disclose criminal history record information
27 obtained under subsection **(3) OR** (4) to a person who is not

1 directly involved in evaluating the applicant's qualifications for
2 employment, an independent contract, or clinical privileges. An
3 individual who knowingly uses or disseminates the criminal history
4 record information obtained under subsection (3) OR (4) in
5 violation of this subsection is guilty of a misdemeanor punishable
6 by imprisonment for not more than 93 days or a fine of not more
7 than \$1,000.00, or both. ~~Upon written request from another health~~
8 ~~facility or agency, psychiatric facility or intermediate care~~
9 ~~facility for people with mental retardation, or adult foster care~~
10 ~~facility that is considering employing, independently contracting~~
11 ~~with, or granting clinical privileges to an individual, a health~~
12 ~~facility or agency that has obtained criminal history record~~
13 ~~information under this section on that individual shall, with the~~
14 ~~consent of the applicant, share the information with the requesting~~
15 ~~health facility or agency, psychiatric facility or intermediate~~
16 ~~care facility for people with mental retardation, or adult foster~~
17 ~~care facility. Except for a knowing or intentional release of false~~
18 ~~information, a health-**STAFFING AGENCY OR COVERED** facility or agency~~
19 ~~has no liability in connection with a criminal background-**HISTORY**~~
20 ~~check conducted under-**IN COMPLIANCE WITH** this section or the~~
21 ~~release of criminal history record information under this~~
22 ~~subsection.~~

23 (10) UPON CONSENT OF AN APPLICANT AS REQUIRED IN SUBSECTION
24 (3) AND UPON REQUEST FROM A STAFFING AGENCY OR COVERED FACILITY
25 THAT HAS MADE A GOOD FAITH OFFER OF EMPLOYMENT OR AN INDEPENDENT
26 CONTRACT OR CLINICAL PRIVILEGES TO THE APPLICANT, THE RELEVANT
27 LICENSING OR REGULATORY DEPARTMENT SHALL REVIEW THE CRIMINAL

1 HISTORY RECORD INFORMATION, IF ANY, AND NOTIFY THE REQUESTING
2 STAFFING AGENCY OR COVERED FACILITY OF THE INFORMATION IN THE
3 MANNER PRESCRIBED IN SUBSECTION (4). UNTIL THE FEDERAL BUREAU OF
4 INVESTIGATION IMPLEMENTS AN AUTOMATIC NOTIFICATION SYSTEM SIMILAR
5 TO THE SYSTEM REQUIRED OF THE STATE POLICE UNDER SUBSECTION (13)
6 AND FEDERAL REGULATIONS ALLOW THE FEDERAL CRIMINAL RECORD TO BE
7 USED FOR SUBSEQUENT AUTHORIZED USES, AS DETERMINED IN AN ORDER
8 ISSUED BY THE DEPARTMENT, A STAFFING AGENCY OR COVERED HEALTH
9 FACILITY MAY RELY ON THE CRIMINAL HISTORY RECORD INFORMATION
10 PROVIDED BY THE RELEVANT LICENSING OR REGULATORY DEPARTMENT UNDER
11 THIS SUBSECTION AND A REQUEST TO THE FEDERAL BUREAU OF
12 INVESTIGATION TO MAKE A SUBSEQUENT DETERMINATION OF THE EXISTENCE
13 OF ANY NATIONAL CRIMINAL HISTORY PERTAINING TO THE APPLICANT IS NOT
14 NECESSARY IF ALL OF THE FOLLOWING REQUIREMENTS ARE MET:

15 (A) THE CRIMINAL HISTORY CHECK WAS CONDUCTED DURING THE
16 IMMEDIATELY PRECEDING 12-MONTH PERIOD.

17 (B) THE APPLICANT HAS BEEN CONTINUOUSLY EMPLOYED BY THE
18 STAFFING AGENCY OR A COVERED FACILITY SINCE THE CRIMINAL HISTORY
19 CHECK WAS CONDUCTED IN COMPLIANCE WITH THIS SECTION OR MEETS THE
20 CONTINUOUS EMPLOYMENT REQUIREMENT OF THIS SUBDIVISION OTHER THAN
21 BEING ON LAYOFF STATUS FOR LESS THAN 1 YEAR FROM A COVERED
22 FACILITY.

23 (C) THE APPLICANT CAN PROVIDE EVIDENCE ACCEPTABLE TO THE
24 RELEVANT LICENSING OR REGULATORY DEPARTMENT THAT HE OR SHE HAS BEEN
25 A RESIDENT OF THIS STATE FOR THE IMMEDIATELY PRECEDING 12-MONTH
26 PERIOD.

27 (11) ~~(10)~~—As a condition of continued employment, each

1 employee, independent contractor, or individual granted clinical
2 privileges shall do each of the following:

3 (a) Agree in writing to report to the ~~health~~**STAFFING AGENCY**
4 **OR COVERED** facility ~~or agency~~ immediately upon being arraigned for
5 1 or more of the criminal offenses listed in subsection (1)(a) to
6 (g), upon being convicted of 1 or more of the criminal offenses
7 listed in subsection (1)(a) to (g), upon becoming the subject of an
8 order or disposition described under subsection (1)(h), and upon
9 being the subject of a substantiated finding of neglect, abuse, or
10 misappropriation of property as described in subsection (1)(i).
11 Reporting of an arraignment under this subdivision is not cause for
12 termination or denial of employment.

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

16 **(12)** ~~(11)~~—In addition to sanctions set forth in section 20165,
17 a licensee, owner, administrator, or operator of a ~~nursing home,~~
18 ~~county medical care facility, hospice, hospital that provides swing~~
19 ~~bed services, home for the aged, or home health agency~~ **STAFFING**
20 **AGENCY OR COVERED FACILITY** who knowingly and willfully fails to
21 conduct the criminal history checks as required under this section
22 is guilty of a misdemeanor punishable by imprisonment for not more
23 than 1 year or a fine of not more than \$5,000.00, or both.

24 **(13)** ~~(12)~~—In collaboration with the department of state
25 police, the department of ~~information~~ technology, **MANAGEMENT, AND**
26 **BUDGET** shall establish **AND MAINTAIN** an automated fingerprint
27 identification system database that would allow the department of

1 state police to store and maintain all fingerprints submitted under
 2 this section and would provide for an automatic notification if and
 3 when a subsequent criminal arrest fingerprint card submitted into
 4 the system matches a set of fingerprints previously submitted ~~in~~
 5 ~~accordance with~~ **UNDER** this section. Upon such notification, the
 6 department of state police shall immediately notify the **RELEVANT**
 7 **LICENSING OR REGULATORY** department and ~~the~~ **THAT** department shall
 8 immediately contact ~~the~~ **EACH** respective health **STAFFING AGENCY OR**
 9 **COVERED** facility ~~or agency~~ with which that individual is
 10 associated. Information in the database established under this
 11 subsection is confidential, is not subject to disclosure under the
 12 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and
 13 shall not be disclosed to any person except for purposes of this
 14 act or for law enforcement purposes.

15 ~~—— (13) On or before April 1, 2009, the department shall submit a~~
 16 ~~written report to the legislature outlining a plan to cover the~~
 17 ~~costs of the criminal history checks required under this section if~~
 18 ~~federal funding is no longer available or is inadequate to cover~~
 19 ~~those costs.~~

20 (14) ~~The department and the department of state police~~ **ALL**
 21 **RELEVANT LICENSING AND REGULATORY DEPARTMENTS** shall maintain an
 22 electronic web-based system to assist ~~those health~~ **STAFFING**
 23 **AGENCIES AND COVERED** facilities ~~and agencies~~ required to check
 24 relevant registries and conduct criminal history checks of its
 25 employees, ~~and independent contractors,~~ **AND INDIVIDUALS GRANTED**
 26 **PRIVILEGES** and to provide for an automated notice to those ~~health~~
 27 **STAFFING AGENCIES AND COVERED** facilities ~~or agencies~~ for those

1 individuals inputted in the system who, since the initial **CRIMINAL**
2 **HISTORY** check, have been convicted of a disqualifying offense or
3 have been the subject of a substantiated finding of abuse, neglect,
4 or misappropriation of property. **THE RELEVANT LICENSING AND**
5 **REGULATORY DEPARTMENTS MAY CHARGE A STAFFING AGENCY A 1-TIME SET-UP**
6 **FEE OF UP TO \$100.00 FOR ACCESS TO THE ELECTRONIC WEB-BASED SYSTEM**
7 **UNDER THIS SECTION.**

8 (15) As used in this section:

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

12 (B) "CONVICTED" MEANS EITHER OF THE FOLLOWING:

13 (i) FOR A CRIME THAT IS NOT A RELEVANT CRIME, A FINAL
14 CONVICTION, THE PAYMENT OF A FINE, A PLEA OF GUILTY OR NOLO
15 CONTENDERE IF ACCEPTED BY THE COURT, OR A FINDING OF GUILT FOR A
16 CRIMINAL LAW VIOLATION OR A JUVENILE ADJUDICATION OR DISPOSITION BY
17 THE JUVENILE DIVISION OF PROBATE COURT OR FAMILY DIVISION OF
18 CIRCUIT COURT FOR A VIOLATION THAT IF COMMITTED BY AN ADULT WOULD
19 BE A CRIME.

20 (ii) FOR A RELEVANT CRIME DESCRIBED UNDER 42 USC 1320A-7(A),
21 CONVICTED MEANS THAT TERM AS DEFINED IN 42 USC 1320A-7.

22 (C) "COVERED FACILITY" MEANS ANY OF THE FOLLOWING:

23 (i) A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY
24 MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING BED
25 SERVICES, HOME FOR THE AGED, OR HOME HEALTH AGENCY.

26 (ii) A PSYCHIATRIC FACILITY OR INTERMEDIATE CARE FACILITY FOR
27 PEOPLE WITH MENTAL RETARDATION UNDER THE MENTAL HEALTH CODE, 1974

1 PA 258, MCL 330.1001 TO 330.2106.

2 (iii) AN ADULT FOSTER CARE FACILITY.

3 (D) "CRIMINAL HISTORY CHECK CONDUCTED IN COMPLIANCE WITH THIS
4 SECTION" INCLUDES A CRIMINAL HISTORY CHECK CONDUCTED ON OR BEFORE
5 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SENTENCE
6 UNDER SECTION 134A OF THE MENTAL HEALTH CODE, 1974 PA 258, MCL
7 330.1134A, OR UNDER SECTION 34B OF THE ADULT FOSTER CARE FACILITY
8 LICENSING ACT, 1979 PA 218, MCL 400.734B.

9 (E) ~~(b)~~—"Direct access" means access to a patient or resident
10 or to a patient's or resident's property, financial information,
11 medical records, treatment information, or any other identifying
12 information.

13 (F) ~~(e)~~—"Home health agency" means a person certified by
14 medicare whose business is to provide to individuals in their
15 places of residence other than in a hospital, nursing home, or
16 county medical care facility 1 or more of the following services:
17 nursing services, therapeutic services, social work services,
18 homemaker services, home health aide services, or other related
19 services.

20 (G) ~~(d)~~—"Independent contract" means a contract entered into
21 by a ~~health-COVERED~~ facility ~~or agency~~ with an individual who
22 provides the contracted services independently or a contract
23 entered into by a ~~health-COVERED~~ facility ~~or agency~~ with an
24 ~~organization or agency that employs or contracts with an individual~~
25 ~~after complying~~ **A STAFFING AGENCY THAT COMPLIES** with the
26 requirements of this section to provide the contracted services to
27 the ~~health-COVERED~~ facility ~~or agency~~ on behalf of the ~~organization~~

1 ~~or~~ STAFFING agency.

2 (H) ~~(e)~~ "Medicare" means benefits under the federal medicare
3 program established under title XVIII of the social security act,
4 42 USC 1395 to ~~1395hhh~~ 1395III.

5 (I) "STAFFING AGENCY" MEANS AN ENTITY THAT RECRUITS CANDIDATES
6 AND PROVIDES TEMPORARY AND PERMANENT QUALIFIED STAFFING FOR COVERED
7 FACILITIES, INCLUDING INDEPENDENT CONTRACTORS.

8 (J) "UNDER THE FACILITY'S CONTROL" MEANS AN INDIVIDUAL
9 EMPLOYED BY OR UNDER INDEPENDENT CONTRACT WITH A COVERED FACILITY
10 FOR WHOM THE COVERED FACILITY DOES BOTH OF THE FOLLOWING:

11 (i) DETERMINES WHETHER THE INDIVIDUAL WHO HAS ACCESS TO
12 PATIENTS OR RESIDENTS MAY PROVIDE CARE, TREATMENT, OR OTHER SIMILAR
13 SUPPORT SERVICE FUNCTIONS TO PATIENTS OR RESIDENTS SERVED BY THE
14 COVERED FACILITY.

15 (ii) DIRECTS OR OVERSEES 1 OR MORE OF THE FOLLOWING:

16 (A) THE POLICY OR PROCEDURES THE INDIVIDUAL MUST FOLLOW IN
17 PERFORMING HIS OR HER DUTIES.

18 (B) THE TASKS PERFORMED BY THE INDIVIDUAL.

19 (C) THE INDIVIDUAL'S WORK SCHEDULE.

20 (D) THE SUPERVISION OR EVALUATION OF THE INDIVIDUAL'S WORK OR
21 JOB PERFORMANCE, INCLUDING IMPOSING DISCIPLINE OR GRANTING
22 PERFORMANCE AWARDS.

23 (E) THE COMPENSATION THE INDIVIDUAL RECEIVES FOR PERFORMING
24 HIS OR HER DUTIES.

25 (F) THE CONDITIONS UNDER WHICH THE INDIVIDUAL PERFORMS HIS OR
26 HER DUTIES.

27 Enacting section 1. This amendatory act does not take effect

1 unless all of the following bills of the 95th Legislature are
2 enacted into law:

3 (a) Senate Bill No. 1254.

4

5 (b) Senate Bill No. 1255.

6