

# HOUSE BILL NO. 5474

February 22, 2024, Introduced by Rep. Schriver and referred to the Committee on Government Operations.

A bill to amend 1974 PA 258, entitled  
"Mental health code,"  
by amending section 134a (MCL 330.1134a), as amended by 2014 PA 72.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 134a. (1) Except as otherwise provided in subsection (2),  
2 a psychiatric facility or other facility defined in 42 USC 1396d(d)  
3 shall not employ, independently contract with, or grant clinical  
4 privileges to an individual who regularly has direct access to or  
5 provides direct services to patients or residents in the

1 psychiatric facility or other facility defined in 42 USC 1396d(d)  
2 if the individual satisfies 1 or more of the following:

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

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

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

20 (ii) A felony involving cruelty or torture.

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

23 (iv) A felony involving criminal sexual conduct.

24 (v) A felony involving abuse or neglect.

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

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

29 (c) Has been convicted of a felony or an attempt or conspiracy

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

8 (d) 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(a), or a state or federal crime that is substantially  
11 similar to the misdemeanors described in this subdivision, within  
12 the 10 years immediately preceding the date of application for  
13 employment or clinical privileges or the date of the execution of  
14 the independent contract:

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

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

22 (iii) A misdemeanor involving criminal sexual conduct.

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

25 (v) A misdemeanor involving abuse or neglect.

26 (e) Has been convicted of any of the following misdemeanors,  
27 other than a misdemeanor for a relevant crime described under 42  
28 USC 1320a-7(a), or a state or federal crime that is substantially  
29 similar to the misdemeanors described in this subdivision, within

1 the 5 years immediately preceding the date of application for  
2 employment or clinical privileges or the date of the execution of  
3 the independent contract:

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

6 (ii) A misdemeanor involving home invasion.

7 (iii) A misdemeanor involving embezzlement.

8 (iv) A misdemeanor involving negligent homicide or a violation  
9 of section 601d(1) of the Michigan vehicle code, ~~1940~~ **1949** PA 300,  
10 MCL 257.601d.

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

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

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

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

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

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

1           (iii) A misdemeanor under part 74 of the public health code,  
2 1978 PA 368, MCL 333.7401 to 333.7461, unless otherwise provided  
3 under subdivision (g).

4           (g) 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 year immediately preceding the date of application for  
9 employment or clinical privileges or the date of the execution of  
10 the independent contract:

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

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

17           (h) Is the subject of an order or disposition under section  
18 16b of chapter IX of the code of criminal procedure, 1927 PA 175,  
19 MCL 769.16b.

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

24           (2) Except as otherwise provided in this subsection or  
25 subsection (5), a psychiatric facility or other facility defined in  
26 42 USC 1396d(d) shall not employ, independently contract with, or  
27 grant privileges to an individual who regularly has direct access  
28 to or provides direct services to patients or residents in the  
29 psychiatric facility or other facility defined in 42 USC 1396d(d)

1 until the psychiatric facility or other facility defined in 42 USC  
 2 1396d(d) or staffing agency has conducted a criminal history check  
 3 in compliance with this section or received criminal history record  
 4 information in compliance with subsection (3) or (10). This  
 5 subsection and subsection (1) do not apply to any of the following:

6 (a) An individual who is employed by, under independent  
 7 contract to, or granted clinical privileges in a psychiatric  
 8 facility or other facility defined in 42 USC 1396d(d) before April  
 9 1, 2006. On or before April 1, 2011, an individual who is exempt  
 10 under this subdivision and who has not been the subject of a  
 11 criminal history check conducted in compliance with this section  
 12 shall provide the department of state police with a set of  
 13 fingerprints and the department of state police shall input those  
 14 fingerprints into the automated fingerprint identification system  
 15 database established under subsection (13). An individual who is  
 16 exempt under this subdivision is not limited to working within the  
 17 psychiatric facility or other facility defined in 42 USC 1396d(d)  
 18 with which he or she is employed by, under independent contract to,  
 19 or granted clinical privileges on April 1, 2006 but may transfer to  
 20 another psychiatric facility or other facility defined in 42 USC  
 21 1396d(d), covered health facility, or adult foster care facility.  
 22 If an individual who is exempt under this subdivision is  
 23 subsequently convicted of a crime described under subsection (1)(a)  
 24 ~~through to~~ (g), ~~or~~ found to be the subject of a substantiated  
 25 finding described under subsection (1)(i) or an order or  
 26 disposition described under subsection (1)(h), or is found to have  
 27 been convicted of a relevant crime described under subsection  
 28 (1)(a), then he or she is no longer exempt and ~~shall~~**must** be  
 29 terminated from employment or denied employment or clinical

1 privileges.

2 (b) An individual who is under an independent contract with a  
3 psychiatric facility or other facility defined in 42 USC 1396d(d)  
4 if he or she is not under the facility's control and the services  
5 for which he or she is contracted is not directly related to the  
6 provision of services to a patient or resident or if the services  
7 for which he or she is contracted allows for direct access to the  
8 patients or residents but is not performed on an ongoing basis.  
9 This exception includes, but is not limited to, an individual who  
10 is under an independent contract with the psychiatric facility or  
11 other facility defined in 42 USC 1396d(d) to provide utility,  
12 maintenance, construction, or communications services.

13 (3) An individual who applies for employment either as an  
14 employee or as an independent contractor or for clinical privileges  
15 with a psychiatric facility or other facility defined in 42 USC  
16 1396d(d) or a staffing agency and who has not been the subject of a  
17 criminal history check conducted in compliance with this section  
18 shall give written consent at the time of application for the  
19 department of state police to conduct a criminal history check  
20 under this section, along with identification acceptable to the  
21 department of state police. If the applicant has been the subject  
22 of a criminal history check conducted in compliance with this  
23 section, the applicant shall give written consent at the time of  
24 application for the psychiatric facility or other facility defined  
25 in 42 USC 1396d(d) or staffing agency to obtain the criminal  
26 history record information as prescribed in subsection (4) from the  
27 relevant licensing or regulatory department and for the department  
28 of state police to conduct a criminal history check under this  
29 section if the requirements of subsection (10) are not met and a

1 request to the ~~federal bureau of investigation~~ **Federal Bureau of**  
2 **Investigation** to make a determination of the existence of any  
3 national criminal history pertaining to the applicant is necessary,  
4 along with identification acceptable to the department of state  
5 police. ~~Upon~~ **On** receipt of the written consent to obtain the  
6 criminal history record information and identification required  
7 under this subsection, the psychiatric facility or other facility  
8 defined in 42 USC 1396d(d) or staffing agency that has made a good-  
9 faith offer of employment or an independent contract or clinical  
10 privileges to the applicant shall request the criminal history  
11 record information from the relevant licensing or regulatory  
12 department and shall make a request regarding that applicant to the  
13 relevant licensing or regulatory department to conduct a check of  
14 all relevant registries in the manner required in subsection (4).  
15 If the requirements of subsection (10) are not met and a request to  
16 the ~~federal bureau of investigation~~ **Federal Bureau of Investigation**  
17 to make a subsequent determination of the existence of any national  
18 criminal history pertaining to the applicant is necessary, the  
19 psychiatric facility or other facility defined in 42 USC 1396d(d)  
20 or staffing agency shall proceed in the manner required in  
21 subsection (4). A staffing agency that employs an applicant who  
22 regularly has direct access to or provides direct services to  
23 patients or residents under an independent contract with a  
24 psychiatric facility or other facility defined in 42 USC 1396d(d)  
25 shall submit information regarding the criminal history check  
26 conducted by the staffing agency to the psychiatric facility or  
27 other facility defined in 42 USC 1396d(d) that has made a good-  
28 faith offer of independent contract to that applicant.

29 (4) ~~Upon~~ **On** receipt of the written consent to conduct a



1 criminal history check and identification required under subsection  
2 (3), a psychiatric facility or other facility defined in 42 USC  
3 1396d(d) or staffing agency that has made a good-faith offer of  
4 employment or an independent contract or clinical privileges to the  
5 applicant shall make a request to the department of state police to  
6 conduct a criminal history check on the applicant, to input the  
7 applicant's fingerprints into the automated fingerprint  
8 identification system database, and to forward the applicant's  
9 fingerprints to the ~~federal bureau of investigation~~. **Federal Bureau**  
10 **of Investigation**. The department of state police shall request the  
11 ~~federal bureau of investigation~~ **Federal Bureau of Investigation** to  
12 make a determination of the existence of any national criminal  
13 history pertaining to the applicant. The applicant shall provide  
14 the department of state police with a set of fingerprints. The  
15 request ~~shall~~ **must** be made in a manner prescribed by the department  
16 of state police. The psychiatric facility or other facility defined  
17 in 42 USC 1396d(d) or staffing agency shall make the written  
18 consent and identification available to the department of state  
19 police. The psychiatric facility or other facility defined in 42  
20 USC 1396d(d) or staffing agency shall make a request regarding that  
21 applicant to the relevant licensing or regulatory department to  
22 conduct a check of all relevant registries established under  
23 federal and state law and regulations for any substantiated  
24 findings of abuse, neglect, or misappropriation of property. If the  
25 department of state police or the ~~federal bureau of investigation~~  
26 **Federal Bureau of Investigation** charges a fee for conducting the  
27 criminal history check, the psychiatric facility or other facility  
28 defined in 42 USC 1396d(d) or staffing agency shall pay the cost of  
29 the charge. The psychiatric facility or other facility defined in

1 42 USC 1396d(d) or staffing agency shall not seek reimbursement for  
2 a charge imposed by the department of state police or the ~~federal~~  
3 ~~bureau of investigation~~ **Federal Bureau of Investigation** from the  
4 individual who is the subject of the criminal history check. A  
5 prospective employee or a prospective independent contractor  
6 covered under this section may not be charged for the cost of a  
7 criminal history check required under this section. The department  
8 of state police shall conduct a criminal history check on the  
9 applicant named in the request. The department of state police  
10 shall provide the department with a written report of the criminal  
11 history check conducted under this subsection. The report ~~shall~~  
12 **must** contain any criminal history record information on the  
13 applicant maintained by the department of state police. The  
14 department of state police shall provide the results of the ~~federal~~  
15 ~~bureau of investigation~~ **Federal Bureau of Investigation**  
16 determination to the department within 30 days after the request is  
17 made. If the requesting psychiatric facility or other facility  
18 defined in 42 USC 1396d(d) or staffing agency is not a state  
19 department or agency and if criminal history record information is  
20 disclosed on the written report of the criminal history check or  
21 the ~~federal bureau of investigation~~ **Federal Bureau of Investigation**  
22 determination that resulted in a conviction, the department shall  
23 notify the psychiatric facility or other facility defined in 42 USC  
24 1396d(d) or staffing agency and the applicant in writing of the  
25 type of crime disclosed on the written report of the criminal  
26 history check or the ~~federal bureau of investigation~~ **Federal Bureau**  
27 **of Investigation** determination without disclosing the details of  
28 the crime. Any charges imposed by the department of state police or  
29 the ~~federal bureau of investigation~~ **Federal Bureau of Investigation**

1 for conducting a criminal history check or making a determination  
2 under this subsection ~~shall~~**must** be paid in the manner required  
3 under this subsection. The notice ~~shall~~**must** include a statement  
4 that the applicant has a right to appeal the information relied  
5 upon by the psychiatric facility or other facility defined in 42  
6 USC 1396d(d) or staffing agency regarding his or her employment  
7 eligibility based on the criminal history check. The notice ~~shall~~  
8 **must** also include information regarding where to file and  
9 describing the appellate procedures established under section  
10 20173b of the public health code, 1978 PA 368, MCL 333.20173b.

11 (5) If a psychiatric facility or other facility defined in 42  
12 USC 1396d(d) determines it necessary to employ or grant clinical  
13 privileges to an applicant before receiving the results of the  
14 applicant's criminal history check or criminal history record  
15 information under this section, the psychiatric facility or other  
16 facility defined in 42 USC 1396d(d) may conditionally employ or  
17 grant conditional clinical privileges to the individual if all of  
18 the following apply:

19 (a) The psychiatric facility or other facility defined in 42  
20 USC 1396d(d) requests the criminal history check or criminal  
21 history record information under this section upon conditionally  
22 employing or conditionally granting clinical privileges to the  
23 individual.

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

26 (i) That he or she has not been convicted of 1 or more of the  
27 crimes that are described in subsection (1)(a) ~~through~~**to** (g)  
28 within the applicable time period prescribed by each subdivision  
29 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) The individual 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) ~~through~~  
8 ~~to (iii)~~, his or her employment or clinical privileges will be  
9 terminated by the psychiatric facility or other facility defined in  
10 42 USC 1396d(d) as required under subsection (1) unless and until  
11 the individual appeals and can prove that the information is  
12 incorrect.

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

17           (c) Except as otherwise provided in this subdivision, the  
18 psychiatric facility or other facility defined in 42 USC 1396d(d)  
19 does not permit the individual to have regular direct access to or  
20 provide direct services to patients or residents in the psychiatric  
21 facility or other facility defined in 42 USC 1396d(d) without  
22 supervision until the criminal history check or criminal history  
23 record information is obtained and the individual is eligible for  
24 that employment or clinical privileges. If required under this  
25 subdivision, the psychiatric facility or other facility defined in  
26 42 USC 1396d(d) shall provide on-site supervision of an individual  
27 in the facility on a conditional basis under this subsection by an  
28 individual who has undergone a criminal history check conducted in  
29 compliance with this section. A psychiatric facility or other

1 facility defined in 42 USC 1396d(d) may permit an individual in the  
2 facility on a conditional basis under this subsection to have  
3 regular direct access to or provide direct services to patients or  
4 residents in the psychiatric facility or other facility defined in  
5 42 USC 1396d(d) without supervision if all of the following  
6 conditions are met:

7 (i) The psychiatric facility or other facility defined in 42  
8 USC 1396d(d), at its own expense and before the individual has  
9 direct access to or provides direct services to patients or  
10 residents of the psychiatric facility or other facility defined in  
11 42 USC 1396d(d), conducts a search of public records on that  
12 individual through the internet criminal history access tool  
13 maintained by the department of state police and the results of  
14 that search do not uncover any information that would indicate that  
15 the individual is not eligible to have regular direct access to or  
16 provide direct services to patients or residents under this  
17 section.

18 (ii) Before the individual has direct access to or provides  
19 direct services to patients or residents of the psychiatric  
20 facility or other facility defined in 42 USC 1396d(d), the  
21 individual signs a statement in writing that he or she has resided  
22 in this state without interruption for at least the immediately  
23 preceding 12-month period.

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

29 (6) The department shall develop and distribute a model form

1 for the statements required under subsection (5)(b) and (c). The  
2 department shall make the model form available to **each** psychiatric  
3 ~~facilities~~**facility** or other facility defined in 42 USC 1396d(d)  
4 subject to this section upon request at no charge.

5 (7) If an individual is employed as a conditional employee or  
6 is granted conditional clinical privileges under subsection (5),  
7 and the information under subsection (3) or report under subsection  
8 (4) does not confirm the individual's statement under subsection  
9 (5)(b)(i) ~~through~~**to (iii)**, the psychiatric facility or other  
10 facility defined in 42 USC 1396d(d) shall terminate the  
11 individual's employment or clinical privileges as required by  
12 subsection (1).

13 (8) An individual who knowingly provides false information  
14 regarding his or her identity, criminal convictions, or  
15 substantiated findings on a statement described in subsection  
16 (5)(b)(i) ~~through~~**to (iii)** is guilty of a misdemeanor punishable by  
17 imprisonment for not more than 93 days or a fine of not more than  
18 \$500.00, or both.

19 (9) A psychiatric facility or other facility defined in 42 USC  
20 1396d(d) or staffing agency shall use criminal history record  
21 information obtained under subsection (3) or (4) only for the  
22 purpose of evaluating an applicant's qualifications for employment,  
23 an independent contract, or clinical privileges in the position for  
24 which he or she has applied and for the purposes of subsections (5)  
25 and (7). A psychiatric facility or other facility defined in 42 USC  
26 1396d(d) or staffing agency or an employee of the psychiatric  
27 facility or other facility defined in 42 USC 1396d(d) or staffing  
28 agency shall not disclose criminal history record information  
29 obtained under subsection (3) or (4) to a person ~~who~~**that** 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. Except for a knowing or intentional  
8 release of false information, a psychiatric facility or other  
9 facility defined in 42 USC 1396d(d) or staffing agency has no  
10 liability in connection with a criminal history check conducted in  
11 compliance with this section or the release of criminal history  
12 record information under this subsection.

13 (10) ~~Upon~~**On** consent of an applicant as required in subsection  
14 (3) and ~~upon~~**on** request from a psychiatric facility or other  
15 facility defined in 42 USC 1396d(d) or staffing agency that has  
16 made a good-faith offer of employment or an independent contract or  
17 clinical privileges to the applicant, the relevant licensing or  
18 regulatory department shall review the criminal history record  
19 information, if any, and notify the requesting psychiatric facility  
20 or other facility defined in 42 USC 1396d(d) or staffing agency of  
21 the information in the manner prescribed in subsection (4). Until  
22 the ~~federal bureau of investigation~~**Federal Bureau of Investigation**  
23 implements an automatic notification system similar to the system  
24 required of the state police under subsection (13) and federal  
25 regulations allow the federal criminal record to be used for  
26 subsequent authorized uses, as determined in an order issued by the  
27 department, a covered health **facility** or staffing agency ~~facility~~  
28 may rely on the criminal history record information provided by the  
29 relevant licensing or regulatory department under this subsection

1 and a request to the ~~federal bureau of investigation~~ **Federal Bureau**  
2 **of Investigation** to make a subsequent determination of the  
3 existence of any national criminal history pertaining to the  
4 applicant is not necessary if all of the following requirements are  
5 met:

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

8 (b) The applicant has been continuously employed by a  
9 psychiatric facility or other facility defined in 42 USC 1396d(d),  
10 covered health facility, or adult foster care facility or the  
11 staffing agency since the criminal history check was conducted in  
12 compliance with this section or meets the continuous employment  
13 requirement of this subdivision other than being on layoff status  
14 for less than 1 year from a psychiatric facility or other facility  
15 defined in 42 USC 1396d(d), covered health facility, or adult  
16 foster care facility.

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

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

24 (a) Agree in writing to report to the psychiatric facility or  
25 other facility defined in 42 USC 1396d(d) or staffing agency  
26 immediately upon being arraigned for 1 or more of the criminal  
27 offenses listed in subsection (1)(a) ~~through to~~ (g), upon being  
28 convicted of 1 or more of the criminal offenses listed in  
29 subsection (1)(a) ~~through to~~ (g), upon becoming the subject of an



1 order or disposition described under subsection (1)(h), and upon  
2 being the subject of a substantiated finding of neglect, abuse, or  
3 misappropriation of property as described in subsection (1)(i).  
4 Reporting of an arraignment under this subdivision is not cause for  
5 termination or denial of employment.

6 (b) If a set of fingerprints is not already on file with the  
7 department of state police, provide the department of state police  
8 with a set of fingerprints.

9 (12) In addition to sanctions set forth in this act, a  
10 licensee, owner, administrator, or operator of a psychiatric  
11 facility or other facility defined in 42 USC 1396d(d) or staffing  
12 agency ~~who~~**that** knowingly and willfully fails to conduct ~~the~~**a**  
13 criminal history ~~checks~~**check** as required under this section is  
14 guilty of a misdemeanor punishable by imprisonment for not more  
15 than 1 year or a fine of not more than \$5,000.00, or both.

16 (13) In collaboration with the department of state police, the  
17 department of technology, management, and budget shall establish  
18 and maintain an automated fingerprint identification system  
19 database that would allow the department of state police to store  
20 and maintain all fingerprints submitted under this section and  
21 would provide for an automatic notification if and when a  
22 subsequent criminal arrest fingerprint card submitted into the  
23 system matches a set of fingerprints previously submitted under  
24 this section. ~~Upon~~**On** notification, the department of state police  
25 shall immediately notify the department and the department shall  
26 immediately contact each respective psychiatric facility or other  
27 facility defined in 42 USC 1396d(d) or staffing agency with which  
28 that individual is associated. Information in the database  
29 established under this subsection is confidential, is not subject

1 to disclosure under the freedom of information act, 1976 PA 442,  
 2 MCL 15.231 to 15.246, and ~~shall~~**must** not be disclosed to any person  
 3 except for purposes of this act or for law enforcement purposes.

4 (14) The department shall maintain an electronic web-based  
 5 system to assist **each** psychiatric ~~facilities~~**facility** or other  
 6 facility defined in 42 USC 1396d(d) and staffing ~~agencies~~**agency**  
 7 required to check relevant registries and conduct criminal history  
 8 checks of its employees and independent contractors ~~,~~and  
 9 individuals granted privileges and to provide for an automated  
 10 notice to ~~these~~**the** psychiatric ~~facilities~~**facility** or other  
 11 facility defined in 42 USC 1396d(d) and staffing ~~agencies~~**agency**  
 12 for those individuals inputted in the system who, since the initial  
 13 criminal history check, have been convicted of a disqualifying  
 14 offense or have been the subject of a substantiated finding of  
 15 abuse, neglect, or misappropriation of property. The department may  
 16 charge a staffing agency a 1-time set-up fee of up to \$100.00 for  
 17 access to the electronic web-based system under this section.

18 (15) As used in this section:

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

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

23 (i) For a crime that is not a relevant crime, a final  
 24 conviction, the payment of a fine, a plea of guilty or nolo  
 25 contendere if accepted by the court, or a finding of guilt for a  
 26 criminal law violation or a juvenile adjudication or disposition by  
 27 the juvenile division of probate court or family division of  
 28 circuit court for a violation that if committed by an adult would  
 29 be a crime.

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

3 (c) "Covered health facility" means a nursing home, county  
4 medical care facility, hospice, hospital that provides swing bed  
5 services, or home for the aged licensed under article 17 of the  
6 public health code, 1978 PA 368, MCL 333.20101 to ~~333.22260,~~  
7 **333.22121**, or home health agency.

8 (d) "Criminal history check conducted in compliance with this  
9 section" includes a criminal history check conducted under this  
10 section, under section 20173a of the public health code, 1978 PA  
11 ~~3658, 368~~, MCL 333.20173a, or under section 34b of the adult foster  
12 care facility licensing act, 1979 PA 218, MCL 400.734b.

13 (e) "Direct access" means access to a patient or resident or  
14 to a patient's or resident's property, financial information,  
15 medical records, treatment information, or any other identifying  
16 information.

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

24 (g) "Independent contract" means a contract entered into by a  
25 health facility or agency with an individual who provides the  
26 contracted services independently or a contract entered into by a  
27 health facility or agency with a staffing agency that complies with  
28 the requirements of this section to provide the contracted services  
29 to the psychiatric facility or other facility defined in 42 USC

1 1396d(d) on behalf of the staffing agency.

2 (h) "Medicare" means benefits under the federal ~~medicare~~  
3 **Medicare** program established under title XVIII of the social  
4 security act, 42 USC 1395 to ~~1395kkk-1.1395lll~~.

5 (i) "Staffing agency" means an entity that recruits candidates  
6 and provides temporary and permanent qualified staffing for a  
7 psychiatric ~~facilities~~-**facility** or other facility defined in 42 USC  
8 1396d(d), including independent contractors.

9 (j) "Under the facility's control" means an individual  
10 employed by or under independent contract with a psychiatric  
11 facility or other facility defined in 42 USC 1396d(d) for whom the  
12 psychiatric facility or other facility defined in 42 USC 1396d(d)  
13 does both of the following:

14 (i) Determines whether the individual who has access to  
15 patients or residents may provide care, treatment, or other similar  
16 support service functions to patients or residents served by the  
17 psychiatric facility or other facility defined in 42 USC 1396d(d).

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

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

21 (B) The tasks performed by the individual.

22 (C) The individual's work schedule.

23 (D) The supervision or evaluation of the individual's work or  
24 job performance, including imposing discipline or granting  
25 performance awards.

26 (E) The compensation the individual receives for performing  
27 his or her duties.

28 (F) The conditions under which the individual performs his or  
29 her duties.

1           Enacting section 1. This amendatory act does not take effect  
2 unless Senate Bill No.\_\_\_\_ or House Bill No. 5477 (request no.  
3 01038'23) of the 102nd Legislature is enacted into law.