

HOUSE BILL No. 4880

June 5, 2001, Introduced by Reps. Gielegem, Neumann, Basham, Bernero, Waters, Schauer, Garza, Lipsey, Bovin, Minore, Bogardus, Pappageorge, Woronchak, Rocca, Voorhees, Vander Veen, Kowall, Adamini, Rich Brown, Kolb, Williams, Vander Roest, Zelenko, Murphy, Callahan, Whitmer, Jacobs, Schermesser, Clarke, Dennis, Hale, Jamnick, Daniels, McConico, Plakas, Rivet, Bob Brown, Pestka, Sheltroun, Rison, Quarles, Phillips, Woodward, Bishop, Lemmons, Richardville, Ruth Johnson, Scranton, Hager, Caul, Van Woerkom, Meyer, Faunce, Gilbert, Stamas, Stewart, Kooiman, Lockwood, Stallworth, Anderson, DeRossett, Howell, Newell, Hansen, Sanborn, Birkholz, Jelinek, Thomas, Raczkowski and Vear and referred to the Committee on Senior Health, Security and Retirement.

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by adding article 16.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 ARTICLE 16. HOME HEALTH SERVICES PROVIDERS

2 PART 191. CRIMINAL BACKGROUND CHECKS

3 SEC. 19101. (1) FOR PURPOSES OF THIS ARTICLE, THE WORDS AND
4 PHRASES DEFINED IN SECTION 19103 APPLY TO ALL SECTIONS IN THIS
5 ARTICLE AND HAVE THE MEANINGS ASCRIBED TO THEM IN THAT SECTION.

6 (2) IN ADDITION, ARTICLE 1 CONTAINS GENERAL DEFINITIONS AND
7 PRINCIPLES OF CONSTRUCTION APPLICABLE TO ALL ARTICLES IN THIS
8 CODE.

9 SEC. 19103. AS USED IN THIS ARTICLE:

10 (A) "HEALTH CARE PROVIDER" MEANS A HEALTH PROFESSIONAL,
11 HEALTH FACILITY OR AGENCY, OR LOCAL HEALTH DEPARTMENT.

1 (B) "HOME HEALTH SERVICES PROVIDER" MEANS AN INDIVIDUAL WHO
2 REGULARLY PROVIDES DIRECT HEALTH SERVICES TO A PATIENT IN THE
3 PATIENT'S HOME.

4 SEC. 19105. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION
5 (2), A HEALTH CARE PROVIDER SHALL NOT EMPLOY OR INDEPENDENTLY
6 CONTRACT WITH A HOME HEALTH SERVICES PROVIDER AFTER THE EFFECTIVE
7 DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION IF THE INDI-
8 VIDUAL HAS BEEN CONVICTED IN THIS STATE OF 1 OR MORE OF THE
9 FOLLOWING:

10 (A) A FELONY OR AN ATTEMPT OR CONSPIRACY TO COMMIT A FELONY
11 WITHIN THE 15 YEARS IMMEDIATELY PRECEDING THE DATE OF APPLICATION
12 FOR EMPLOYMENT OR THE DATE OF THE EXECUTION OF THE CONTRACT OR
13 WITHIN THE 15 YEARS IMMEDIATELY PRECEDING THE DATE OF THE
14 INDIVIDUAL'S MOST RECENT CRIMINAL HISTORY CHECK PERFORMED UNDER
15 THIS SECTION, IF THE INDIVIDUAL IS EMPLOYED BY OR UNDER CONTRACT
16 TO THE HEALTH CARE PROVIDER BEFORE THE EFFECTIVE DATE OF THE
17 AMENDATORY ACT THAT ADDED THIS SECTION.

18 (B) A MISDEMEANOR INVOLVING ABUSE, NEGLECT, ASSAULT, BAT-
19 TERY, OR CRIMINAL SEXUAL CONDUCT OR INVOLVING FRAUD OR THEFT
20 AGAINST A VULNERABLE ADULT AS THAT TERM IS DEFINED IN
21 SECTION 145M OF THE MICHIGAN PENAL CODE, 1931 PA 328,
22 MCL 750.145M, WITHIN THE 10 YEARS IMMEDIATELY PRECEDING THE DATE
23 OF APPLICATION FOR EMPLOYMENT OR THE DATE OF THE EXECUTION OF THE
24 CONTRACT OR WITHIN THE 10 YEARS IMMEDIATELY PRECEDING THE DATE OF
25 THE HOME HEALTH SERVICES PROVIDER'S MOST RECENT CRIMINAL HISTORY
26 CHECK PERFORMED UNDER THIS SECTION, IF THE HOME HEALTH SERVICES
27 PROVIDER IS EMPLOYED BY OR UNDER CONTRACT TO THE HEALTH CARE

1 PROVIDER BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
2 ADDED THIS SECTION.

3 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION AND SUB-
4 SECTION (5), A HEALTH CARE PROVIDER SHALL NOT EMPLOY OR INDEPEN-
5 DENTLY CONTRACT WITH A HOME HEALTH SERVICES PROVIDER AFTER THE
6 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION
7 UNTIL THE HEALTH CARE PROVIDER COMPLIES WITH SUBSECTION (4).
8 THIS SUBSECTION AND SUBSECTION (1) DO NOT APPLY TO A HOME HEALTH
9 SERVICES PROVIDER WHO IS EMPLOYED BY OR UNDER CONTRACT TO THE
10 HEALTH CARE PROVIDER BEFORE THE EFFECTIVE DATE OF THE AMENDATORY
11 ACT THAT ADDED THIS SUBSECTION, IF THE HOME HEALTH SERVICES PRO-
12 VIDER HAS HAD A CRIMINAL HISTORY CHECK THAT IS EQUIVALENT TO THE
13 CRIMINAL HISTORY CHECK CONDUCTED UNDER THIS SECTION WITHIN THE 2
14 YEARS IMMEDIATELY PRECEDING THE EFFECTIVE DATE OF THE AMENDATORY
15 ACT THAT ADDED THIS SECTION OR IS PERFORMED UNDER THIS SECTION.

16 (3) A HOME HEALTH SERVICES PROVIDER WHO APPLIES FOR EMPLOY-
17 MENT EITHER AS AN EMPLOYEE OR AS AN INDEPENDENT CONTRACTOR WITH A
18 HEALTH CARE PROVIDER SHALL GIVE WRITTEN CONSENT AT THE TIME OF
19 APPLICATION FOR THE DEPARTMENT OF STATE POLICE OR ANOTHER AUTHO-
20 RIZED LAW ENFORCEMENT AGENCY TO CONDUCT A CRIMINAL HISTORY CHECK
21 UNDER SUBSECTION (4). IF THE DEPARTMENT OF STATE POLICE OR OTHER
22 AUTHORIZED LAW ENFORCEMENT AGENCY HAS CONDUCTED A CRIMINAL HIS-
23 TORY CHECK ON THE APPLICANT WITHIN THE 6 MONTHS IMMEDIATELY PRE-
24 CEDING THE DATE OF APPLICATION, THE HEALTH CARE PROVIDER MAY USE
25 A CERTIFIED COPY OF THAT CRIMINAL HISTORY CHECK INSTEAD OF
26 OBTAINING WRITTEN CONSENT AND REQUESTING A NEW CRIMINAL HISTORY
27 CHECK UNDER THIS SUBSECTION AND SUBSECTION (4). IF THE APPLICANT

1 IS APPLYING FOR EMPLOYMENT AS AN INDEPENDENT CONTRACTOR AND IS
2 USING A PRIOR CRIMINAL HISTORY CHECK AS DESCRIBED IN THIS SUBSEC-
3 TION, THE HEALTH CARE PROVIDER SHALL ACCEPT THE CERTIFIED COPY OF
4 THE CRIMINAL HISTORY CHECK ONLY FROM THE FIRM OR AGENCY THAT
5 EMPLOYS THE APPLICANT OR FROM THE DEPARTMENT OF STATE POLICE OR
6 OTHER AUTHORIZED LAW ENFORCEMENT AGENCY.

7 (4) UPON RECEIPT OF THE WRITTEN CONSENT REQUIRED UNDER SUB-
8 SECTION (3), A HEALTH CARE PROVIDER SHALL MAKE A REQUEST TO THE
9 DEPARTMENT OF STATE POLICE OR ANOTHER AUTHORIZED LAW ENFORCEMENT
10 AGENCY TO CONDUCT A CRIMINAL HISTORY CHECK ON THE APPLICANT. THE
11 REQUEST SHALL BE MADE ON A FORM AND IN A MANNER PRESCRIBED BY THE
12 DEPARTMENT OF STATE POLICE OR BY THE OTHER AUTHORIZED LAW
13 ENFORCEMENT AGENCY. IF THERE IS A CHARGE FOR CONDUCTING THE
14 CRIMINAL HISTORY CHECK, THE HEALTH CARE PROVIDER REQUESTING THE
15 CRIMINAL HISTORY CHECK SHALL PAY THE COST OF THE CHARGE. THE
16 HEALTH CARE PROVIDER SHALL NOT SEEK REIMBURSEMENT FOR THE CHARGE
17 FROM THE APPLICANT WHO IS THE SUBJECT OF THE CRIMINAL HISTORY
18 CHECK. THE DEPARTMENT OF STATE POLICE OR OTHER AUTHORIZED LAW
19 ENFORCEMENT AGENCY SHALL CONDUCT A CRIMINAL HISTORY CHECK ON THE
20 APPLICANT NAMED IN THE REQUEST. THE DEPARTMENT OF STATE POLICE
21 OR OTHER AUTHORIZED LAW ENFORCEMENT AGENCY SHALL PROVIDE THE
22 HEALTH CARE PROVIDER WITH A REPORT OF THE CRIMINAL HISTORY
23 CHECK. THE REPORT SHALL CONTAIN ANY CRIMINAL HISTORY RECORD
24 INFORMATION ON THE APPLICANT MAINTAINED BY THE DEPARTMENT OF
25 STATE POLICE OR OTHER AUTHORIZED LAW ENFORCEMENT AGENCY. THE
26 DEPARTMENT OF STATE POLICE OR OTHER AUTHORIZED LAW ENFORCEMENT

1 AGENCY SHALL CERTIFY EACH REPORT WITH AN OFFICIAL SEAL OR OTHER
2 SYMBOL OF AUTHENTICITY.

3 (5) IF A HEALTH CARE PROVIDER DETERMINES IT NECESSARY TO
4 EMPLOY AN APPLICANT BEFORE RECEIVING THE RESULTS OF THE
5 APPLICANT'S CRIMINAL HISTORY CHECK UNDER SUBSECTION (4), THE
6 HEALTH CARE PROVIDER MAY EMPLOY THE APPLICANT AS A CONDITIONAL
7 EMPLOYEE OR CONDITIONAL STAFF MEMBER IF ALL OF THE FOLLOWING
8 APPLY:

9 (A) THE HEALTH CARE PROVIDER REQUESTS THE CRIMINAL HISTORY
10 CHECK UNDER SUBSECTION (4) BEFORE CONDITIONALLY EMPLOYING THE
11 APPLICANT.

12 (B) THE APPLICANT SIGNS A STATEMENT THAT HE OR SHE HAS NOT
13 BEEN CONVICTED OF 1 OR MORE OF THE CRIMES THAT ARE DESCRIBED IN
14 SUBSECTION (1)(A) AND (B), AND AGREEING THAT, IF THE CRIMINAL
15 HISTORY CHECK CONDUCTED UNDER SUBSECTION (4) IS NOT THE SAME AS
16 THE APPLICANT'S STATEMENT UNDER THIS SUBDIVISION, HIS OR HER
17 EMPLOYMENT IS TERMINABLE AT THE OPTION OF THE HEALTH CARE
18 PROVIDER. NOT LATER THAN 90 DAYS AFTER THE EFFECTIVE DATE OF THE
19 AMENDATORY ACT THAT ADDED THIS SUBSECTION, THE DEPARTMENT SHALL
20 DEVELOP AND DISTRIBUTE A MODEL FORM FOR THE STATEMENT REQUIRED
21 UNDER THIS SUBDIVISION. THE DEPARTMENT SHALL MAKE THE MODEL FORM
22 AVAILABLE TO HEALTH CARE PROVIDERS UPON REQUEST AT NO CHARGE.

23 (6) IF AN APPLICANT IS EMPLOYED AS A CONDITIONAL EMPLOYEE
24 UNDER SUBSECTION (5) AND THE REPORT DESCRIBED IN SUBSECTION (4)
25 IS SUBSTANTIALLY DIFFERENT FROM HIS OR HER STATEMENT UNDER SUB-
26 SECTION (5)(B), THE HEALTH CARE PROVIDER MAY TERMINATE THE
27 INDIVIDUAL'S EMPLOYMENT. A HOME HEALTH SERVICES PROVIDER WHO

1 KNOWINGLY PROVIDES FALSE INFORMATION REGARDING CRIMINAL
2 CONVICTIONS ON A STATEMENT DESCRIBED IN SUBSECTION (5)(B) IS
3 GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE
4 THAN 90 DAYS OR A FINE OF NOT MORE THAN \$500.00, OR BOTH.

5 (7) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (8), A HEALTH
6 CARE PROVIDER SHALL USE CRIMINAL HISTORY RECORD INFORMATION
7 OBTAINED UNDER SUBSECTION (4) OR (5) ONLY FOR THE PURPOSE OF
8 EVALUATING AN APPLICANT'S QUALIFICATIONS FOR EMPLOYMENT IN THE
9 POSITION FOR WHICH HE OR SHE HAS APPLIED AND FOR THE PURPOSES OF
10 SUBSECTIONS (5) AND (6). A HEALTH CARE PROVIDER OR AN EMPLOYEE
11 OF THE HEALTH CARE PROVIDER SHALL NOT DISCLOSE CRIMINAL HISTORY
12 RECORD INFORMATION OBTAINED UNDER SUBSECTION (4) OR (5) TO A
13 PERSON WHO IS NOT DIRECTLY INVOLVED IN EVALUATING THE APPLICANT'S
14 QUALIFICATIONS FOR EMPLOYMENT.

15 (8) A HEALTH CARE PROVIDER SHALL REPORT THE CRIMINAL HISTORY
16 RECORD INFORMATION OBTAINED UNDER SUBSECTION (4) OR (5) AND ANY
17 OTHER CRIMINAL HISTORY INFORMATION REGARDING AN APPLICANT
18 EMPLOYED BY OR UNDER CONTRACT TO THE HEALTH CARE PROVIDER AND
19 OBTAINED BY THE HEALTH CARE PROVIDER TO THE DEPARTMENT OF CON-
20 SUMER AND INDUSTRY SERVICES.

21 SEC. 19107. (1) A HEALTH CARE PROVIDER SHALL REPORT EITHER
22 OF THE FOLLOWING TO THE DEPARTMENT OF CONSUMER AND INDUSTRY SERV-
23 ICES NOT MORE THAN 30 DAYS AFTER IT OCCURS:

24 (A) DISCIPLINARY ACTION TAKEN BY THE HEALTH CARE PROVIDER
25 AGAINST A HOME HEALTH SERVICES PROVIDER WHO IS EMPLOYED BY OR
26 UNDER CONTRACT TO THE HEALTH CARE PROVIDER BASED ON THE HOME
27 HEALTH SERVICES PROVIDER'S PROFESSIONAL COMPETENCE OR

1 DISCIPLINARY ACTION THAT RESULTS IN A CHANGE OF EMPLOYMENT
2 STATUS.

3 (B) A CASE IN WHICH A HOME HEALTH SERVICES PROVIDER RESIGNS
4 OR TERMINATES A CONTRACT OR WHOSE CONTRACT IS NOT RENEWED INSTEAD
5 OF THE HEALTH CARE PROVIDER TAKING DISCIPLINARY ACTION AGAINST
6 THE HOME HEALTH SERVICES PROVIDER.

7 (2) UPON REQUEST BY ANOTHER HEALTH CARE PROVIDER SEEKING A
8 REFERENCE FOR PURPOSES OF CHANGING OR GRANTING STAFF CREDENTIALS
9 OR EMPLOYMENT, A HEALTH CARE PROVIDER THAT EMPLOYS OR CONTRACTS
10 WITH A HOME HEALTH SERVICES PROVIDER SHALL NOTIFY THE REQUESTING
11 HEALTH CARE PROVIDER OF DISCIPLINARY OR OTHER ACTION REPORTABLE
12 UNDER SUBSECTION (5) THAT IT HAS TAKEN AGAINST A HOME HEALTH
13 SERVICES PROVIDER EMPLOYED BY OR UNDER CONTRACT TO THE HEALTH
14 CARE PROVIDER.

15 (3) A HEALTH CARE PROVIDER SHALL REPORT TO THE DEPARTMENT OF
16 CONSUMER AND INDUSTRY SERVICES FINAL DISCIPLINARY ACTION TAKEN BY
17 THE HEALTH CARE PROVIDER AGAINST A HOME HEALTH SERVICES PROVIDER
18 THAT INVOLVES SEXUAL OR OTHER ABUSE, NEGLECT, PHYSICAL HARM,
19 THEFT, OR FRAUDULENT BEHAVIOR AGAINST A PATIENT AND ALL CRIMINAL
20 HISTORY RECORD INFORMATION OBTAINED UNDER SECTION 19105(4) OR
21 (5). A REPORT REQUIRED UNDER THIS SUBSECTION IS IN ADDITION TO,
22 AND IS NOT SATISFIED BY, A REPORT MADE UNDER SUBSECTION (1)(A).

23 (4) A REPORT RECEIVED BY THE DEPARTMENT OF CONSUMER AND
24 INDUSTRY SERVICES UNDER SUBSECTION (1) OR (3) IS PUBLIC
25 INFORMATION.

1 (5) FOR THE PURPOSE OF REPORTING DISCIPLINARY ACTIONS
2 ACCORDING TO THIS SECTION, A HEALTH CARE PROVIDER SHALL INCLUDE
3 ONLY THE FOLLOWING IN THE INFORMATION PROVIDED:
4 (A) THE NAME OF THE HOME HEALTH SERVICES PROVIDER AGAINST
5 WHOM DISCIPLINARY ACTION HAS BEEN TAKEN.
6 (B) A DESCRIPTION OF THE DISCIPLINARY ACTION TAKEN.
7 (C) THE SPECIFIC GROUNDS FOR THE DISCIPLINARY ACTION TAKEN.
8 (D) THE DATE OF THE INCIDENT THAT IS THE BASIS FOR THE DIS-
9 CIPLINARY ACTION.