

# HOUSE BILL No. 5577

December 13, 2007, Introduced by Rep. Wojno and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending sections 13805, 18701, 18711, 20173a, and 21401 (MCL 333.13805, 333.18701, 333.18711, 333.20173a, and 333.21401),  
section 13805 as added by 1990 PA 21, sections 18701 and 18711 as  
added by 2004 PA 3, section 20173a as added by 2006 PA 28, and  
section 21401 as amended by 1996 PA 267, and by adding section  
1104a.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1        SEC. 1104A. (1) "HOME HEALTH AGENCY" MEANS A HOME HEALTH  
2        AGENCY AS DEFINED IN SECTION 1861(O) OF THE SOCIAL SECURITY ACT, 42  
3        USC 1395X, WHICH HOME HEALTH AGENCY HAS MET THE MEDICARE CONDITIONS  
4        OF PARTICIPATION AS PRESCRIBED IN SECTION 1891(A) OF THE SOCIAL

1 SECURITY ACT, 42 USC 1395BBB, OR IS CERTIFIED BY THIS STATE AS A  
2 HOME HEALTH AGENCY PURSUANT TO AN AGREEMENT DESCRIBED IN SECTION  
3 1864 OF THE SOCIAL SECURITY ACT, 42 USC 1395AA.

4 (2) "HOME MEDICAL EQUIPMENT" OR "DURABLE MEDICAL EQUIPMENT"  
5 MEANS EQUIPMENT THAT IS APPROPRIATE FOR USE IN THE HOME, IS  
6 PRIMARILY AND CUSTOMARILY USED TO SERVE A MEDICAL PURPOSE, IS NOT  
7 USEFUL TO A PERSON IN THE ABSENCE OF ILLNESS OR INJURY, CAN STAND  
8 REPEATED USE, AND IS 1 OR MORE OF THE FOLLOWING:

9 (A) LIFE-SUSTAINING EQUIPMENT PRESCRIBED BY A LICENSED HEALTH  
10 PROFESSIONAL THAT MECHANICALLY SUSTAINS, RESTORES, OR SUPPLANTS A  
11 VITAL BODILY FUNCTION, INCLUDING, BUT NOT LIMITED TO, BREATHING.

12 (B) TECHNOLOGICALLY SOPHISTICATED MEDICAL EQUIPMENT PRESCRIBED  
13 BY A LICENSED HEALTH PROFESSIONAL THAT REQUIRES INDIVIDUALIZED  
14 ADJUSTMENT OR REGULAR MAINTENANCE BY A HOME MEDICAL EQUIPMENT  
15 SERVICES PROVIDER TO MANAGE A CONSUMER'S HEALTH CARE CONDITION OR  
16 MAINTAIN THE EFFECTIVENESS OF THE EQUIPMENT.

17 (C) AN ITEM SPECIFIED BY THE DEPARTMENT OR APPROPRIATE BOARD  
18 IN RULES PROMULGATED UNDER THIS ACT.

19 (3) "HOME MEDICAL EQUIPMENT SERVICES" MEANS THE SALE,  
20 DELIVERY, INSTALLATION, MAINTENANCE, REPLACEMENT, OR DEMONSTRATION  
21 OF HOME MEDICAL EQUIPMENT.

22 (4) "HOME MEDICAL EQUIPMENT SERVICES PROVIDER" MEANS A PERSON  
23 ENGAGED IN OFFERING HOME MEDICAL EQUIPMENT SERVICES TO CONSUMERS IN  
24 THIS STATE.

25 (5) "HOME SERVICES" MEANS ANY OF THE FOLLOWING SERVICES THAT  
26 ARE PERFORMED BY OR THROUGH A HOSPICE, HOME SERVICES AGENCY, OR  
27 HOME HEALTH AGENCY TO PROTECT AND MAINTAIN A CONSUMER IN HIS OR HER

1 PERSONAL RESIDENCE OR OTHER INDEPENDENT LIVING ENVIRONMENT:

2 (A) ASSISTANCE WITH ROUTINE ACTIVITIES OF DAILY LIVING,  
3 INCLUDING EATING, BATHING, DRESSING, TOILETING, TRANSFERRING, AND  
4 CONTINENCE.

5 (B) ASSISTANCE WITH INSTRUMENTAL ACTIVITIES OF DAILY LIVING,  
6 WHICH ACTIVITIES ARE RELATED TO INDEPENDENT LIVING AND INCLUDE  
7 PREPARING MEALS, MANAGING MONEY, SHOPPING FOR GROCERIES OR PERSONAL  
8 ITEMS, PERFORMING LIGHT OR HEAVY HOUSEWORK, AND USING A TELEPHONE.

9 (C) COMPANIONSHIP SERVICES.

10 (D) PRIVATE DUTY NURSING.

11 (E) THERAPY SERVICES, INCLUDING PHYSICAL THERAPY, OCCUPATIONAL  
12 THERAPY, SPEECH PATHOLOGY, AND AUDIOLOGY.

13 (F) SPECIALIZED CARE ON AN HOURLY, SHIFT, OR CONTINUAL BASIS.

14 (G) OTHER HEALTH-RELATED SERVICES, INCLUDING SOCIAL WORK AND  
15 NUTRITIONAL ASSISTANCE.

16 (6) "HOME SERVICES AGENCY" MEANS A PUBLIC OR PRIVATE  
17 ORGANIZATION THAT SUPPLIES, ARRANGES FOR, REFERS, OR SCHEDULES  
18 EMPLOYEES OR PROVIDES FOR INDEPENDENT CONTRACTORS TO PROVIDE HOME  
19 SERVICES TO A CONSUMER IN HIS OR HER PERSONAL RESIDENCE OR OTHER  
20 INDEPENDENT LIVING ENVIRONMENT FOR WHICH THE ORGANIZATION RECEIVES  
21 A FEE, CONSIDERATION, OR COMPENSATION OF ANY KIND. HOME SERVICES  
22 AGENCY DOES NOT INCLUDE A HOSPICE, HOME HEALTH AGENCY, OR VOLUNTEER  
23 PROVIDER OF HOME SERVICES.

24 Sec. 13805. (1) "Advisory council" means the interdepartmental  
25 medical waste advisory council created in section 13827.

26 (2) "Autoclave" means to sterilize using superheated steam  
27 under pressure.

1           (3) "Decontamination" means rendering medical waste safe for  
2 routine handling as solid waste.

3           (4) "Fund" means the medical waste emergency response fund  
4 created in section 13829.

5           (5) "Health facility or agency" means that term as defined in  
6 section 20106.

7           (6) "Household" means a single detached dwelling unit or a  
8 single unit of a multiple dwelling.

9           (7) "Infectious agent" means a pathogen that is sufficiently  
10 virulent so that if a susceptible host is exposed to the pathogen  
11 in an adequate concentration and through a portal of entry, the  
12 result could be transmission of disease to a human.

13           (8) "Medical waste" means any of the following that are not  
14 generated from a household, a farm operation or other agricultural  
15 business, a home for the aged, **A HOME SERVICES AGENCY**, or a home  
16 health ~~care~~ agency:

17           (a) Cultures and stocks of infectious agents and associated  
18 biologicals, including laboratory waste, biological production  
19 wastes, discarded live and attenuated vaccines, culture dishes, and  
20 related devices.

21           (b) Liquid human and animal waste, including blood and blood  
22 products and body fluids, but not including urine or materials  
23 stained with blood or body fluids.

24           (c) Pathological waste.

25           (d) Sharps.

26           (e) Contaminated wastes from animals that have been exposed to  
27 agents infectious to humans, these being primarily research

1 animals.

2 Sec. 18701. (1) As used in this part:

3 (a) "Health facility" means a health facility or agency  
4 licensed under article 17.

5 (b) "Medical director" means a physician who is responsible  
6 for the quality, safety, appropriateness, and effectiveness of the  
7 respiratory care services provided by a respiratory therapist, who  
8 assists in quality monitoring, protocol development, and competency  
9 validation, and who meets all of the following:

10 (i) Is the medical director of an inpatient or outpatient  
11 respiratory care service or department within a health facility, or  
12 of a home care ~~HEALTH~~ agency, **HOME SERVICES AGENCY**, durable ~~HOME~~  
13 medical equipment ~~company~~ **SERVICES PROVIDER**, or educational  
14 program.

15 (ii) Has special interest and knowledge in the diagnosis and  
16 treatment of cardiopulmonary disorders and diseases.

17 (iii) Is qualified by training or experience, or both, in the  
18 management of acute and chronic cardiopulmonary disorders and  
19 diseases.

20 (c) "Physician" means that term as defined in sections 17001  
21 and 17501.

22 (d) "Practice of respiratory care" means the provision of  
23 respiratory care services. Practice of respiratory care may be  
24 provided by an inpatient or outpatient service or department within  
25 a health facility, ~~by a home care~~ **HEALTH** agency, **HOME SERVICES**  
26 **AGENCY**, ~~or durable HOME~~ medical equipment ~~company~~ **SERVICES**  
27 **PROVIDER**, or ~~by an~~ educational program.

1 (e) "Respiratory care services" means preventative services,  
2 diagnostic services, therapeutic services, and rehabilitative  
3 services under the written, verbal, or telecommunicated order of a  
4 physician to an individual with a disorder, disease, or abnormality  
5 of the cardiopulmonary system as diagnosed by a physician.

6 Respiratory care services involve, but are not limited to,  
7 observing, assessing, and monitoring signs and symptoms, reactions,  
8 general behavior, and general physical response of individuals to  
9 respiratory care services, including determination of whether those  
10 signs, symptoms, reactions, behaviors, or general physical response  
11 exhibit abnormal characteristics; the administration of  
12 pharmacological, diagnostic, and therapeutic agents related to  
13 respiratory care services; the collection of blood specimens and  
14 other bodily fluids and tissues for, and the performance of,  
15 cardiopulmonary diagnostic testing procedures including, but not  
16 limited to, blood gas analysis; development, implementation, and  
17 modification of respiratory care treatment plans based on assessed  
18 abnormalities of the cardiopulmonary system, respiratory care  
19 protocols, clinical pathways, referrals, and written, verbal, or  
20 telecommunicated orders of a physician; application, operation, and  
21 management of mechanical ventilatory support and other means of  
22 life support; and the initiation of emergency procedures under the  
23 rules promulgated by the board.

24 (f) "Respiratory therapist" and "respiratory care  
25 practitioner" mean an individual engaged in the practice of  
26 respiratory care and who is responsible for providing respiratory  
27 care services and who is licensed under this article as a

1 respiratory therapist or respiratory care practitioner.

2 (2) In addition to the definitions in this part, article 1  
3 contains general definitions and principles of construction  
4 applicable to all articles in this code and part 161 contains  
5 definitions applicable to this part.

6 Sec. 18711. (1) The department may issue a temporary license  
7 as a respiratory therapist to an applicant who does not meet all of  
8 the requirements of section 18709, if the applicant does all of the  
9 following:

10 (a) Applies to the department for a temporary license within 1  
11 year after ~~the effective date of the amendatory act that added this~~  
12 ~~part~~ **JULY 1, 2004**.

13 (b) Provides satisfactory proof to the department that he or  
14 she has been employed full-time as a respiratory therapist for the  
15 4 years immediately preceding the date of application in 1 of the  
16 following:

17 (i) An inpatient or outpatient respiratory care service or  
18 department within a licensed health facility.

19 (ii) A ~~durable~~ **HOME** medical equipment ~~company~~ **SERVICES**  
20 **PROVIDER, HOME SERVICES AGENCY,** or home ~~care~~ **HEALTH** agency.

21 (iii) A respiratory care educational program.

22 (c) Provides the department with a letter of recommendation  
23 from his or her medical director at the time of application  
24 attesting to the applicant's clinical competence as a respiratory  
25 therapist.

26 (d) Pays the applicable fees prescribed by section 16344.

27 (2) A temporary license issued by the department under this

1 section expires within the same time period as a nontemporary  
2 license issued by the department under this part. The holder of a  
3 temporary license issued under this section may apply for 1 or more  
4 renewals of the temporary license a number of times, but an  
5 individual may not hold a temporary license for more than a total  
6 of 4 years.

7 (3) The holder of a temporary license issued under this  
8 section is subject to this part and the rules promulgated under  
9 this part, except for the requirements for licensure.

10 Sec. 20173a. (1) Except as otherwise provided in subsection  
11 (2), a health facility or agency that is a nursing home, county  
12 medical care facility, hospice, hospital that provides swing bed  
13 services, home for the aged, **HOME SERVICES AGENCY**, or home health  
14 agency shall not employ, independently contract with, or grant  
15 clinical privileges to an individual who regularly has direct  
16 access to or provides direct services to patients or residents in  
17 the health facility or agency after ~~the effective date of this~~  
18 ~~section~~ **APRIL 1, 2006** if the individual satisfies 1 or more of the  
19 following:

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

22 (b) Has been convicted of any of the following felonies, an  
23 attempt or conspiracy to commit any of those felonies, or any other  
24 state or federal crime that is similar to the felonies described in  
25 this subdivision, other than a felony for a relevant crime  
26 described under 42 USC 1320a-7, unless 15 years have lapsed since  
27 the individual completed all of the terms and conditions of his or



1 her sentencing, parole, and probation for that conviction prior to  
2 the date of application for employment or clinical privileges or  
3 the date of the execution of the independent contract:

4 (i) A felony that involves the intent to cause death or serious  
5 impairment of a body function, that results in death or serious  
6 impairment of a body function, that involves the use of force or  
7 violence, or that involves the threat of the use of force or  
8 violence.

9 (ii) A felony involving cruelty or torture.

10 (iii) A felony under chapter XXA of the Michigan penal code,  
11 1931 PA 328, MCL 750.145m to 750.145r.

12 (iv) A felony involving criminal sexual conduct.

13 (v) A felony involving abuse or neglect.

14 (vi) A felony involving the use of a firearm or dangerous  
15 weapon.

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

18 (c) Has been convicted of a felony or an attempt or conspiracy  
19 to commit a felony, other than a felony for a relevant crime  
20 described under 42 USC 1320a-7 or a felony described under  
21 subdivision (b), unless 10 years have lapsed since the individual  
22 completed all of the terms and conditions of his or her sentencing,  
23 parole, and probation for that conviction prior to the date of  
24 application for employment or clinical privileges or the date of  
25 the execution of the independent contract.

26 (d) Has been convicted of any of the following misdemeanors,  
27 other than a misdemeanor for a relevant crime described under 42

1 USC 1320a-7, or a state or federal crime that is substantially  
2 similar to the misdemeanors described in this subdivision, within  
3 the 10 years immediately preceding the date of application for  
4 employment or clinical privileges or the date of the execution of  
5 the independent contract:

6 (i) A misdemeanor involving the use of a firearm or dangerous  
7 weapon with the intent to injure, the use of a firearm or dangerous  
8 weapon that results in a personal injury, or a misdemeanor  
9 involving the use of force or violence or the threat of the use of  
10 force or violence.

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

13 (iii) A misdemeanor involving criminal sexual conduct.

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

16 (v) A misdemeanor involving abuse or neglect.

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

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

26 (ii) A misdemeanor involving home invasion.

27 (iii) A misdemeanor involving embezzlement.

1 (iv) A misdemeanor involving negligent homicide.

2 (v) A misdemeanor involving larceny unless otherwise provided  
3 under subdivision (g).

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

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

9 (f) 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, or a state or federal crime that is substantially  
12 similar to the misdemeanors described in this subdivision, within  
13 the 3 years immediately preceding the date of application for  
14 employment or clinical privileges or the date of the execution of  
15 the independent contract:

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

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

21 (iii) A misdemeanor under part 74 unless otherwise provided  
22 under subdivision (g).

23 (g) Has been convicted of any of the following misdemeanors,  
24 other than a misdemeanor for a relevant crime described under 42  
25 USC 1320a-7, or a state or federal crime that is substantially  
26 similar to the misdemeanors described in this subdivision, within  
27 the year immediately preceding the date of application for

1 employment or clinical privileges or the date of the execution of  
2 the independent contract:

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

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

8 (h) Is the subject of an order or disposition under section  
9 16b of chapter IX of the code of criminal procedure, 1927 PA 175,  
10 MCL 769.16b.

11 (i) Has been the subject of a substantiated finding of  
12 neglect, abuse, or misappropriation of property by a state or  
13 federal agency pursuant to an investigation conducted in accordance  
14 with 42 USC 1395i-3 or 1396r.

15 (2) Except as otherwise provided in subsection (5), a health  
16 facility or agency that is a nursing home, county medical care  
17 facility, hospice, hospital that provides swing bed services, home  
18 for the aged, **HOME SERVICES AGENCY**, or home health agency shall not  
19 employ, independently contract with, or grant privileges to an  
20 individual who regularly has direct access to or provides direct  
21 services to patients or residents in the health facility or agency  
22 after ~~the effective date of this section~~ **APRIL 1, 2006** until the  
23 health facility or agency conducts a criminal history check in  
24 compliance with subsection (4). This subsection and subsection (1)  
25 do not apply to any of the following:

26 (a) An individual who is employed by, under independent  
27 contract to, or granted clinical privileges in a health facility or

1 agency before ~~the effective date of this section~~ **APRIL 1, 2006**.  
2 Within 24 months after ~~the effective date of this section~~ **APRIL 1,**  
3 **2006**, an individual who is exempt under this subdivision shall  
4 provide the department of state police with a set of fingerprints  
5 and the department of state police shall input those fingerprints  
6 into the automated fingerprint identification system database  
7 established under subsection (12). An individual who is exempt  
8 under this subdivision is not limited to working within the health  
9 facility or agency with which he or she is employed by, under  
10 independent contract to, or granted clinical privileges on ~~the~~  
11 ~~effective date of this section~~ **APRIL 1, 2006**. That individual may  
12 transfer to another health facility or agency that is under the  
13 same ownership with which he or she was employed, under contract,  
14 or granted privileges. If that individual wishes to transfer to  
15 another health facility or agency that is not under the same  
16 ownership, he or she may do so provided that a criminal history  
17 check is conducted by the new health facility or agency in  
18 accordance with subsection (4). If an individual who is exempt  
19 under this subdivision is subsequently convicted of a crime  
20 described under subsection (1)(a) through (g) or found to be the  
21 subject of a substantiated finding described under subsection  
22 (1)(i) or an order or disposition described under subsection  
23 (1)(h), or is found to have been convicted of a relevant crime  
24 described under subsection (1)(a), then he or she is no longer  
25 exempt and shall be terminated from employment or denied  
26 employment.

27 (b) An individual who is an independent contractor with a

1 health facility or agency that is a nursing home, county medical  
2 care facility, hospice, hospital that provides swing bed services,  
3 home for the aged, **HOME SERVICES AGENCY**, or home health agency if  
4 the services for which he or she is contracted is not directly  
5 related to the provision of services to a patient or resident or if  
6 the services for which he or she is contracted allows for direct  
7 access to the patients or residents but is not performed on an  
8 ongoing basis. This exception includes, but is not limited to, an  
9 individual who independently contracts with the health facility or  
10 agency to provide utility, maintenance, construction, or  
11 communications services.

12 (3) An individual who applies for employment either as an  
13 employee or as an independent contractor or for clinical privileges  
14 with a health facility or agency that is a nursing home, county  
15 medical care facility, hospice, hospital that provides swing bed  
16 services, home for the aged, **HOME SERVICES AGENCY**, or home health  
17 agency and has received a good faith offer of employment, an  
18 independent contract, or clinical privileges from the health  
19 facility or agency shall give written consent at the time of  
20 application for the department of state police to conduct an  
21 initial criminal history check under this section, along with  
22 identification acceptable to the department of state police.

23 (4) Upon receipt of the written consent and identification  
24 required under subsection (3), a health facility or agency that is  
25 a nursing home, county medical care facility, hospice, hospital  
26 that provides swing bed services, home for the aged, **HOME SERVICES**  
27 **AGENCY**, or home health agency that has made a good faith offer of

1 employment or an independent contract or clinical privileges to the  
2 applicant shall make a request to the department of state police to  
3 conduct a criminal history check on the applicant, to input the  
4 applicant's fingerprints into the automated fingerprint  
5 identification system database, and to forward the applicant's  
6 fingerprints to the federal bureau of investigation. The department  
7 of state police shall request the federal bureau of investigation  
8 to make a determination of the existence of any national criminal  
9 history pertaining to the applicant. The applicant shall provide  
10 the department of state police with a set of fingerprints. The  
11 request shall be made in a manner prescribed by the department of  
12 state police. The health facility or agency shall make the written  
13 consent and identification available to the department of state  
14 police. The health facility or agency shall make a request to the  
15 relevant licensing or regulatory department to conduct a check of  
16 all relevant registries established pursuant to federal and state  
17 law and regulations for any substantiated findings of abuse,  
18 neglect, or misappropriation of property. If the department of  
19 state police or the federal bureau of investigation charges a fee  
20 for conducting the initial criminal history check, the charge shall  
21 be paid by or reimbursed by the department with federal funds as  
22 provided to implement a pilot program for national and state  
23 background checks on direct patient access employees of long-term  
24 care facilities or providers in accordance with section 307 of the  
25 medicare prescription drug, improvement, and modernization act of  
26 2003, Public Law 108-173. The health facility or agency shall not  
27 seek reimbursement for a charge imposed by the department of state

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



1 statement that the applicant has a right to appeal a decision made  
2 by the health facility or agency regarding his or her employment  
3 eligibility based on the criminal background check. The notice  
4 shall also include information regarding where to file and  
5 describing the appellate procedures established under section  
6 20173b.

7 (5) If a health facility or agency that is a nursing home,  
8 county medical care facility, hospice, hospital that provides swing  
9 bed services, home for the aged, **HOME SERVICES AGENCY**, or home  
10 health agency determines it necessary to employ or grant clinical  
11 privileges to an applicant before receiving the results of the  
12 applicant's criminal history check under this section, the health  
13 facility or agency may conditionally employ or grant conditional  
14 clinical privileges to the individual if all of the following  
15 apply:

16 (a) The health facility or agency requests the criminal  
17 history check under this section upon conditionally employing or  
18 conditionally granting clinical privileges to the individual.

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

21 (i) That he or she has not been convicted of 1 or more of the  
22 crimes that are described in subsection (1)(a) through (g) within  
23 the applicable time period prescribed by each subdivision  
24 respectively.

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

27 (iii) That he or she has not been the subject of a substantiated

1 finding as described in subsection (1)(i).

2 (iv) The individual agrees that, if the information in the  
3 criminal history check conducted under this section does not  
4 confirm the individual's statements under subparagraphs (i) through  
5 (iii), his or her employment or clinical privileges will be  
6 terminated by the health facility or agency as required under  
7 subsection (1) unless and until the individual appeals and can  
8 prove that the information is incorrect.

9 (v) That he or she understands the conditions described in  
10 subparagraphs (i) through (iv) that result in the termination of his  
11 or her employment or clinical privileges and that those conditions  
12 are good cause for termination.

13 (6) The department shall develop and distribute a model form  
14 for the statement required under subsection (5)(b). The department  
15 shall make the model form available to health facilities or  
16 agencies subject to this section upon request at no charge.

17 (7) If an individual is employed as a conditional employee or  
18 is granted conditional clinical privileges under subsection (5),  
19 and the report described in subsection (4) does not confirm the  
20 individual's statement under subsection (5)(b)(i) through (iii), the  
21 health facility or agency shall terminate the individual's  
22 employment or clinical privileges as required by subsection (1).

23 (8) An individual who knowingly provides false information  
24 regarding his or her identity, criminal convictions, or  
25 substantiated findings on a statement described in subsection  
26 (5)(b)(i) through (iii) is guilty of a misdemeanor punishable by  
27 imprisonment for not more than 93 days or a fine of not more than

1 \$500.00, or both.

2 (9) A health facility or agency that is a nursing home, county  
3 medical care facility, hospice, hospital that provides swing bed  
4 services, home for the aged, **HOME SERVICES AGENCY**, or home health  
5 agency shall use criminal history record information obtained under  
6 subsection (4) only for the purpose of evaluating an applicant's  
7 qualifications for employment, an independent contract, or clinical  
8 privileges in the position for which he or she has applied and for  
9 the purposes of subsections (5) and (7). A health facility or  
10 agency or an employee of the health facility or agency shall not  
11 disclose criminal history record information obtained under  
12 subsection (4) to a person who is not directly involved in  
13 evaluating the applicant's qualifications for employment, an  
14 independent contract, or clinical privileges. An individual who  
15 knowingly uses or disseminates the criminal history record  
16 information obtained under subsection (4) in violation of this  
17 subsection is guilty of a misdemeanor punishable by imprisonment  
18 for not more than 93 days or a fine of not more than \$1,000.00, or  
19 both. Upon written request from another health facility or agency,  
20 psychiatric facility or intermediate care facility for people with  
21 mental retardation, or adult foster care facility that is  
22 considering employing, independently contracting with, or granting  
23 clinical privileges to an individual, a health facility or agency  
24 that has obtained criminal history record information under this  
25 section on that individual shall, with the consent of the  
26 applicant, share the information with the requesting health  
27 facility or agency, psychiatric facility or intermediate care

1 facility for people with mental retardation, or adult foster care  
2 facility. Except for a knowing or intentional release of false  
3 information, a health facility or agency has no liability in  
4 connection with a criminal background check conducted under this  
5 section or the release of criminal history record information under  
6 this subsection.

7 (10) As a condition of continued employment, each employee,  
8 independent contractor, or individual granted clinical privileges  
9 shall do each of the following:

10 (a) Agree in writing to report to the health facility or  
11 agency immediately upon being arraigned for 1 or more of the  
12 criminal offenses listed in subsection (1)(a) through (g), upon  
13 being convicted of 1 or more of the criminal offenses listed in  
14 subsection (1)(a) through (g), upon becoming the subject of an  
15 order or disposition described under subsection (1)(h), and upon  
16 being the subject of a substantiated finding of neglect, abuse, or  
17 misappropriation of property as described in subsection (1)(i).  
18 Reporting of an arraignment under this subdivision is not cause for  
19 termination or denial of employment.

20 (b) If a set of fingerprints is not already on file with the  
21 department of state police, provide the department of state police  
22 with a set of fingerprints.

23 (11) In addition to sanctions set forth in section 20165, a  
24 licensee, owner, administrator, or operator of a nursing home,  
25 county medical care facility, hospice, hospital that provides swing  
26 bed services, home for the aged, **HOME SERVICES AGENCY**, or home  
27 health agency who knowingly and willfully fails to conduct the

1 criminal history checks as required under this section is guilty of  
2 a misdemeanor punishable by imprisonment for not more than 1 year  
3 or a fine of not more than \$5,000.00, or both.

4 (12) In collaboration with the department of state police, the  
5 department of information technology shall establish an automated  
6 fingerprint identification system database that would allow the  
7 department of state police to store and maintain all fingerprints  
8 submitted under this section and would provide for an automatic  
9 notification if and when a subsequent criminal arrest fingerprint  
10 card submitted into the system matches a set of fingerprints  
11 previously submitted in accordance with this section. Upon such  
12 notification, the department of state police shall immediately  
13 notify the department and the department shall immediately contact  
14 the respective health facility or agency with which that individual  
15 is associated. Information in the database established under this  
16 subsection is confidential, is not subject to disclosure under the  
17 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and  
18 shall not be disclosed to any person except for purposes of this  
19 act or for law enforcement purposes.

20 (13) Within 1 year after ~~the effective date of the amendatory~~  
21 ~~act that added this section~~ **APRIL 1, 2006**, the department shall  
22 submit a written report to the legislature regarding each of the  
23 following:

24 (a) The impact and effectiveness of ~~this amendatory act~~ **2006**  
25 **PA 28**.

26 (b) The feasibility of implementing criminal history checks on  
27 volunteers who work in those health facilities or agencies and on

1 state agency employees who are involved in the licensing of those  
2 health facilities or agencies and regulation of those employees.

3 (c) The amount of federal funds provided to implement a pilot  
4 program for national and state background checks on direct access  
5 employees of long-term care facilities or providers, the amount of  
6 those funds expended to date, and the amount of those funds  
7 remaining.

8 (14) Within 3 years after ~~the effective date of this section~~  
9 **APRIL 1, 2006**, the department shall submit a written report to the  
10 legislature outlining a plan to cover the costs of the criminal  
11 history checks required under this section if federal funding is no  
12 longer available or is inadequate to cover those costs.

13 (15) By March 1, 2007, the department and the department of  
14 state police shall develop and implement an electronic web-based  
15 system to assist those health facilities and agencies required to  
16 check relevant registries and conduct criminal history checks of  
17 its employees and independent contractors and to provide for an  
18 automated notice to those health facilities or agencies for those  
19 individuals inputted in the system who, since the initial check,  
20 have been convicted of a disqualifying offense or have been the  
21 subject of a substantiated finding of abuse, neglect, or  
22 misappropriation of property.

23 (16) As used in this section:

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

27 (b) "Direct access" means access to a patient or resident or

1 to a patient's or resident's property, financial information,  
 2 medical records, treatment information, or any other identifying  
 3 information.

4 (c) "Home health agency" ~~means a person certified by medicare~~  
 5 ~~whose business is to provide to individuals in their places of~~  
 6 ~~residence other than in a hospital, nursing home, or county medical~~  
 7 ~~care facility 1 or more of the following services: nursing~~  
 8 ~~services, therapeutic services, social work services, homemaker~~  
 9 ~~services, home health aide services, or other related services AND~~

10 **"HOME SERVICES AGENCY" MEAN THOSE TERMS AS DEFINED IN SECTION**  
 11 **1104A.**

12 (d) "Independent contract" means a contract entered into by a  
 13 health facility or agency with an individual who provides the  
 14 contracted services independently or a contract entered into by a  
 15 health facility or agency with an organization or agency that  
 16 employs or contracts with an individual after complying with the  
 17 requirements of this section to provide the contracted services to  
 18 the health facility or agency on behalf of the organization or  
 19 agency.

20 (e) "Medicare" means benefits under the federal medicare  
 21 program established under title XVIII of the social security act,  
 22 42 USC 1395 to ~~1395ggg~~ **1395HHH**.

23 Sec. 21401. (1) As used in this part:

24 (a) "Home care" means a level of care provided to a patient  
 25 that is consistent with the categories "routine home care **DAY**" or  
 26 "continuous home care **DAY**" described in 42 ~~C.F.R.~~ **CFR** 418.302(b) (1)  
 27 and (2) **AND INCLUDES HOME SERVICES AS THAT TERM IS DEFINED IN**

1 **SECTION 1104A.**

2 (b) "Hospice residence" means a facility that meets all of the  
3 following:

4 (i) Provides 24-hour hospice care to 2 or more patients at a  
5 single location.

6 (ii) Either provides inpatient care directly in compliance with  
7 this article and with the standards set forth in 42 ~~C.F.R.~~ **CFR**  
8 418.100 or provides home care as described in this article.

9 (iii) Is owned, operated, and governed by a hospice program that  
10 is licensed under this article and provides aggregate days of  
11 patient care on a biennial basis to not less than 51% of its  
12 hospice patients in their own homes. As used in this subparagraph,  
13 "home" does not include a residence established by a patient in a  
14 health facility or agency licensed under this article or a  
15 residence established by a patient in an adult foster care facility  
16 licensed under the adult foster care facility licensing act, ~~Act~~  
17 ~~No. 218 of the Public Acts of 1979, being sections 400.701 to~~  
18 ~~400.737 of the Michigan Compiled Laws 1979 PA 218, MCL 400.701 TO~~  
19 **400.737.**

20 (c) "Inpatient care" means a level of care provided to a  
21 patient that is consistent with the categories "inpatient respite  
22 care day" and "general inpatient care day" described in 42 ~~C.F.R.~~  
23 **CFR** 418.302(b)(3) and (4).

24 (2) Article 1 contains general definitions and principles of  
25 construction applicable to all articles in this ~~code~~ **ACT** and part  
26 201 contains definitions applicable to this part.