

HOUSE BILL No. 5587

May 20, 2014, Introduced by Reps. Yanez, Switalski, Cavanagh, Hovey-Wright, Brown, Segal, Cochran, Haugh, Slavens, Geiss, Roberts, Dianda, Lane, Faris, Durhal and Darany and referred to the Committee on Judiciary.

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

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

10 (b) Has been convicted of any of the following felonies, an

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

10 (i) A felony that involves the intent to cause death or serious
11 impairment of a body function, that results in death or serious
12 impairment of a body function, that involves the use of force or
13 violence, or that involves the threat of the use of force or
14 violence.

15 (ii) A felony involving cruelty or torture.

16 (iii) A felony under chapter XXA of the Michigan penal code,
17 1931 PA 328, MCL 750.145m to 750.145r.

18 (iv) A felony involving criminal sexual conduct.

19 (v) A felony involving abuse or neglect.

20 (vi) A felony involving the use of a firearm or dangerous
21 weapon.

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

24 (c) Has been convicted of a felony or an attempt or conspiracy
25 to commit a felony, other than a felony for a relevant crime
26 described under 42 USC 1320a-7(a) or a felony described under
27 subdivision (b), unless 10 years have lapsed since the individual

1 completed all of the terms and conditions of his or her sentencing,
2 parole, and probation for that conviction prior to the date of
3 application for employment or clinical privileges or the date of
4 the execution of the independent contract.

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

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

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

19 (iii) A misdemeanor involving criminal sexual conduct.

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

22 (v) A misdemeanor involving abuse or neglect.

23 (e) 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(a), or a state or federal crime that is substantially
26 similar to the misdemeanors described in this subdivision, within
27 the 5 years 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 involving cruelty if committed by an
4 individual who is less than 16 years of age.

5 (ii) A misdemeanor involving home invasion.

6 (iii) A misdemeanor involving embezzlement.

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

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

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

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

17 (f) 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(a), or a state or federal crime that is substantially
20 similar to the misdemeanors described in this subdivision, within
21 the 3 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 for assault if there was no use of a firearm
25 or dangerous weapon and no intent to commit murder or inflict great
26 bodily injury.

27 (ii) A misdemeanor of retail fraud in the third degree unless

1 otherwise provided under subdivision (g).

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

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

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

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

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

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

25 (2) Except as otherwise provided in this subsection or
26 subsection (5), a psychiatric facility or other facility defined in
27 42 USC 1396d(d) shall not employ, independently contract with, or

1 grant privileges to an individual who regularly has direct access
2 to or provides direct services to patients or residents in the
3 psychiatric facility or other facility defined in 42 USC 1396d(d)
4 until the psychiatric facility or other facility defined in 42 USC
5 1396d(d) or staffing agency has conducted a criminal history check
6 in compliance with this section or received criminal history record
7 information in compliance with subsection (3) or (10). This
8 subsection and subsection (1) do not apply to ~~any of the following:~~
9 ~~—— (a) An individual who is employed by, under independent~~
10 ~~contract to, or granted clinical privileges in a psychiatric~~
11 ~~facility or other facility defined in 42 USC 1396d(d) before April~~
12 ~~1, 2006. On or before April 1, 2011, an individual who is exempt~~
13 ~~under this subdivision and who has not been the subject of a~~
14 ~~criminal history check conducted in compliance with this section~~
15 ~~shall provide the department of state police with a set of~~
16 ~~fingerprints and the department of state police shall input those~~
17 ~~fingerprints into the automated fingerprint identification system~~
18 ~~database established under subsection (13). An individual who is~~
19 ~~exempt under this subdivision is not limited to working within the~~
20 ~~psychiatric facility or other facility defined in 42 USC 1396d(d)~~
21 ~~with which he or she is employed by, under independent contract to,~~
22 ~~or granted clinical privileges on April 1, 2006 but may transfer to~~
23 ~~another psychiatric facility or other facility defined in 42 USC~~
24 ~~1396d(d), covered health facility, or adult foster care facility.~~
25 ~~If an individual who is exempt under this subdivision is~~
26 ~~subsequently convicted of a crime described under subsection (1) (a)~~
27 ~~through (g) or found to be the subject of a substantiated finding~~

1 ~~described under subsection (1)(i) or an order or disposition~~
2 ~~described under subsection (1)(h), or is found to have been~~
3 ~~convicted of a relevant crime described under subsection (1)(a),~~
4 ~~then he or she is no longer exempt and shall be terminated from~~
5 ~~employment or denied employment or clinical privileges.~~

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

17 (3) An individual who applies for employment either as an
18 employee or as an independent contractor or for clinical privileges
19 with a psychiatric facility or other facility defined in 42 USC
20 1396d(d) or a staffing agency and who has not been the subject of a
21 criminal history check conducted in compliance with this section
22 shall give written consent at the time of application for the
23 department of state police to conduct a criminal history check
24 under this section, along with identification acceptable to the
25 department of state police. If the applicant has been the subject
26 of a criminal history check conducted in compliance with this
27 section, the applicant shall give written consent at the time of

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

1 services to patients or residents under an independent contract
2 with a psychiatric facility or other facility defined in 42 USC
3 1396d(d) shall submit information regarding the criminal history
4 check conducted by the staffing agency to the psychiatric facility
5 or other facility defined in 42 USC 1396d(d) that has made a good-
6 faith offer of independent contract to that applicant.

7 (4) Upon receipt of the written consent to conduct a criminal
8 history check and identification required under subsection (3), a
9 psychiatric facility or other facility defined in 42 USC 1396d(d)
10 or staffing agency that has made a good-faith offer of employment
11 or an independent contract or clinical privileges to the applicant
12 shall make a request to the department of state police to conduct a
13 criminal history check on the applicant, to input the applicant's
14 fingerprints into the automated fingerprint identification system
15 database, and to forward the applicant's fingerprints to the
16 federal bureau of investigation. The department of state police
17 shall request the federal bureau of investigation to make a
18 determination of the existence of any national criminal history
19 pertaining to the applicant. The applicant shall provide the
20 department of state police with a set of fingerprints. The request
21 shall be made in a manner prescribed by the department of state
22 police. The psychiatric facility or other facility defined in 42
23 USC 1396d(d) or staffing agency shall make the written consent and
24 identification available to the department of state police. The
25 psychiatric facility or other facility defined in 42 USC 1396d(d)
26 or staffing agency shall make a request regarding that applicant to
27 the relevant licensing or regulatory department to conduct a check

1 of all relevant registries established under federal and state law
2 and regulations for any substantiated findings of abuse, neglect,
3 or misappropriation of property. If the department of state police
4 or the federal bureau of investigation charges a fee for conducting
5 the criminal history check, the psychiatric facility or other
6 facility defined in 42 USC 1396d(d) or staffing agency shall pay
7 the cost of the charge. The psychiatric facility or other facility
8 defined in 42 USC 1396d(d) or staffing agency shall not seek
9 reimbursement for a charge imposed by the department of state
10 police or the federal bureau of investigation from the individual
11 who is the subject of the criminal history check. A prospective
12 employee or a prospective independent contractor covered under this
13 section may not be charged for the cost of a criminal history check
14 required under this section. The department of state police shall
15 conduct a criminal history check on the applicant named in the
16 request. The department of state police shall provide the
17 department with a written report of the criminal history check
18 conducted under this subsection. The report shall contain any
19 criminal history record information on the applicant maintained by
20 the department of state police. The department of state police
21 shall provide the results of the federal bureau of investigation
22 determination to the department within 30 days after the request is
23 made. If the requesting psychiatric facility or other facility
24 defined in 42 USC 1396d(d) or staffing agency is not a state
25 department or agency and if criminal history record information is
26 disclosed on the written report of the criminal history check or
27 the federal bureau of investigation determination that resulted in

1 a conviction, the department shall notify the psychiatric facility
2 or other facility defined in 42 USC 1396d(d) or staffing agency and
3 the applicant in writing of the type of crime disclosed on the
4 written report of the criminal history check or the federal bureau
5 of investigation determination without disclosing the details of
6 the crime. Any charges imposed by the department of state police or
7 the federal bureau of investigation for conducting a criminal
8 history check or making a determination under this subsection shall
9 be paid in the manner required under this subsection. The notice
10 shall include a statement that the applicant has a right to appeal
11 the information relied upon by the psychiatric facility or other
12 facility defined in 42 USC 1396d(d) or staffing agency regarding
13 his or her employment eligibility based on the criminal history
14 check. The notice shall also include information regarding where to
15 file and describing the appellate procedures established under
16 section 20173b of the public health code, 1978 PA 368, MCL
17 333.20173b.

18 (5) If a psychiatric facility or other facility defined in 42
19 USC 1396d(d) determines it necessary to employ or grant clinical
20 privileges to an applicant before receiving the results of the
21 applicant's criminal history check or criminal history record
22 information under this section, the psychiatric facility or other
23 facility defined in 42 USC 1396d(d) may conditionally employ or
24 grant conditional clinical privileges to the individual if all of
25 the following apply:

26 (a) The psychiatric facility or other facility defined in 42
27 USC 1396d(d) requests the criminal history check or criminal

1 history record information under this section upon conditionally
2 employing or conditionally granting clinical privileges to the
3 individual.

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

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

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

12 (iii) That he or she has not been the subject of a substantiated
13 finding as described in subsection (1)(i).

14 (iv) The individual agrees that, if the information in the
15 criminal history check conducted under this section does not
16 confirm the individual's statements under subparagraphs (i) through
17 (iii), his or her employment or clinical privileges will be
18 terminated by the psychiatric facility or other facility defined in
19 42 USC 1396d(d) as required under subsection (1) unless and until
20 the individual appeals and can prove that the information is
21 incorrect.

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

26 (c) Except as otherwise provided in this subdivision, the
27 psychiatric facility or other facility defined in 42 USC 1396d(d)

1 does not permit the individual to have regular direct access to or
2 provide direct services to patients or residents in the psychiatric
3 facility or other facility defined in 42 USC 1396d(d) without
4 supervision until the criminal history check or criminal history
5 record information is obtained and the individual is eligible for
6 that employment or clinical privileges. If required under this
7 subdivision, the psychiatric facility or other facility defined in
8 42 USC 1396d(d) shall provide on-site supervision of an individual
9 in the facility on a conditional basis under this subsection by an
10 individual who has undergone a criminal history check conducted in
11 compliance with this section. A psychiatric facility or other
12 facility defined in 42 USC 1396d(d) may permit an individual in the
13 facility on a conditional basis under this subsection to have
14 regular direct access to or provide direct services to patients or
15 residents in the psychiatric facility or other facility defined in
16 42 USC 1396d(d) without supervision if all of the following
17 conditions are met:

18 (i) The psychiatric facility or other facility defined in 42
19 USC 1396d(d), at its own expense and before the individual has
20 direct access to or provides direct services to patients or
21 residents of the psychiatric facility or other facility defined in
22 42 USC 1396d(d), conducts a search of public records on that
23 individual through the internet criminal history access tool
24 maintained by the department of state police and the results of
25 that search do not uncover any information that would indicate that
26 the individual is not eligible to have regular direct access to or
27 provide direct services to patients or residents under this

1 section.

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

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

13 (6) The department shall develop and distribute a model form
14 for the statements required under subsection (5) (b) and (c). The
15 department shall make the model form available to psychiatric
16 facilities or other facility defined in 42 USC 1396d(d) subject to
17 this section upon request at no charge.

18 (7) If an individual is employed as a conditional employee or
19 is granted conditional clinical privileges under subsection (5),
20 and the information under subsection (3) or report under subsection
21 (4) does not confirm the individual's statement under subsection
22 (5) (b) (i) through (iii), the psychiatric facility or other facility
23 defined in 42 USC 1396d(d) shall terminate the individual's
24 employment or clinical privileges as required by subsection (1).

25 (8) An individual who knowingly provides false information
26 regarding his or her identity, criminal convictions, or
27 substantiated findings on a statement described in subsection

1 (5) (b) (i) through (iii) is guilty of a misdemeanor punishable by
2 imprisonment for not more than 93 days or a fine of not more than
3 \$500.00, or both.

4 (9) A psychiatric facility or other facility defined in 42 USC
5 1396d(d) or staffing agency shall use criminal history record
6 information obtained under subsection (3) or (4) only for the
7 purpose of evaluating an applicant's qualifications for employment,
8 an independent contract, or clinical privileges in the position for
9 which he or she has applied and for the purposes of subsections (5)
10 and (7). A psychiatric facility or other facility defined in 42 USC
11 1396d(d) or staffing agency or an employee of the psychiatric
12 facility or other facility defined in 42 USC 1396d(d) or staffing
13 agency shall not disclose criminal history record information
14 obtained under subsection (3) or (4) to a person who is not
15 directly involved in evaluating the applicant's qualifications for
16 employment, an independent contract, or clinical privileges. An
17 individual who knowingly uses or disseminates the criminal history
18 record information obtained under subsection (3) or (4) in
19 violation of this subsection is guilty of a misdemeanor punishable
20 by imprisonment for not more than 93 days or a fine of not more
21 than \$1,000.00, or both. Except for a knowing or intentional
22 release of false information, a psychiatric facility or other
23 facility defined in 42 USC 1396d(d) or staffing agency has no
24 liability in connection with a criminal history check conducted in
25 compliance with this section or the release of criminal history
26 record information under this subsection.

27 (10) Upon consent of an applicant as required in subsection

1 (3) and upon request from a psychiatric facility or other facility
2 defined in 42 USC 1396d(d) or staffing agency that has made a good-
3 faith offer of employment or an independent contract or clinical
4 privileges to the applicant, the relevant licensing or regulatory
5 department shall review the criminal history record information, if
6 any, and notify the requesting psychiatric facility or other
7 facility defined in 42 USC 1396d(d) or staffing agency of the
8 information in the manner prescribed in subsection (4). Until the
9 federal bureau of investigation implements an automatic
10 notification system similar to the system required of the state
11 police under subsection (13) and federal regulations allow the
12 federal criminal record to be used for subsequent authorized uses,
13 as determined in an order issued by the department, a covered
14 health or staffing agency facility may rely on the criminal history
15 record information provided by the relevant licensing or regulatory
16 department under this subsection and a request to the federal
17 bureau of investigation to make a subsequent determination of the
18 existence of any national criminal history pertaining to the
19 applicant is not necessary if all of the following requirements are
20 met:

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

23 (b) The applicant has been continuously employed by a
24 psychiatric facility or other facility defined in 42 USC 1396d(d),
25 covered health facility, or adult foster care facility or the
26 staffing agency since the criminal history check was conducted in
27 compliance with this section or meets the continuous employment

1 requirement of this subdivision other than being on layoff status
2 for less than 1 year from a psychiatric facility or other facility
3 defined in 42 USC 1396d(d), covered health facility, or adult
4 foster care facility.

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

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

12 (a) Agree in writing to report to the psychiatric facility or
13 other facility defined in 42 USC 1396d(d) or staffing agency
14 immediately upon being arraigned for 1 or more of the criminal
15 offenses listed in subsection (1)(a) through (g), upon being
16 convicted of 1 or more of the criminal offenses listed in
17 subsection (1)(a) through (g), upon becoming the subject of an
18 order or disposition described under subsection (1)(h), and upon
19 being the subject of a substantiated finding of neglect, abuse, or
20 misappropriation of property as described in subsection (1)(i).
21 Reporting of an arraignment under this subdivision is not cause for
22 termination or denial of employment.

23 (b) If a set of fingerprints is not already on file with the
24 department of state police, provide the department of state police
25 with a set of fingerprints.

26 (12) In addition to sanctions set forth in this act, a
27 licensee, owner, administrator, or operator of a psychiatric

1 facility or other facility defined in 42 USC 1396d(d) or staffing
2 agency who knowingly and willfully fails to conduct the criminal
3 history checks as required under this section is guilty of a
4 misdemeanor punishable by imprisonment for not more than 1 year or
5 a fine of not more than \$5,000.00, or both.

6 (13) In collaboration with the department of state police, the
7 department of technology, management, and budget shall establish
8 and maintain an automated fingerprint identification system
9 database that would allow the department of state police to store
10 and maintain all fingerprints submitted under this section and
11 would provide for an automatic notification if and when a
12 subsequent criminal arrest fingerprint card submitted into the
13 system matches a set of fingerprints previously submitted under
14 this section. Upon notification, the department of state police
15 shall immediately notify the department and the department shall
16 immediately contact each respective psychiatric facility or other
17 facility defined in 42 USC 1396d(d) or staffing agency with which
18 that individual is associated. Information in the database
19 established under this subsection is confidential, is not subject
20 to disclosure under the freedom of information act, 1976 PA 442,
21 MCL 15.231 to 15.246, and shall not be disclosed to any person
22 except for purposes of this act or for law enforcement purposes.

23 (14) The department shall maintain an electronic web-based
24 system to assist psychiatric facilities or other facility defined
25 in 42 USC 1396d(d) and staffing agencies required to check relevant
26 registries and conduct criminal history checks of its employees and
27 independent contractors, and individuals granted privileges and to

1 provide for an automated notice to those psychiatric facilities or
2 other facility defined in 42 USC 1396d(d) and staffing agencies for
3 those individuals inputted in the system who, since the initial
4 criminal history check, have been convicted of a disqualifying
5 offense or have been the subject of a substantiated finding of
6 abuse, neglect, or misappropriation of property. The department may
7 charge a staffing agency a 1-time set-up fee of up to \$100.00 for
8 access to the electronic web-based system under this section.

9 (15) As used in this section:

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

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

14 (i) For a crime that is not a relevant crime **DESCRIBED UNDER 42**
15 **USC 1320A-7(A)**, a final conviction, the payment of a fine, a plea
16 of guilty or nolo contendere if accepted by the court, or a finding
17 of guilt for a criminal law violation or a juvenile adjudication or
18 disposition by the juvenile division of probate court or family
19 division of circuit court for a violation that if committed by an
20 adult would be a crime.

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

23 (c) "Covered health facility" means a nursing home, county
24 medical care facility, hospice, hospital that provides swing bed
25 services, or home for the aged licensed under article 17 of the
26 public health code, 1978 PA 368, MCL 333.20101 to 333.22260, or
27 home health agency.

1 (d) "Criminal history check conducted in compliance with this
2 section" includes a criminal history check conducted under this
3 section, under section 20173a of the public health code, 1978 PA
4 3658, MCL 333.20173a, or under section 34b of the adult foster care
5 facility licensing act, 1979 PA 218, MCL 400.734b.

6 (e) "Direct access" means access to a patient or resident or
7 to a patient's or resident's property, financial information,
8 medical records, treatment information, or any other identifying
9 information.

10 (f) "Home health agency" means ~~a person certified by medicare~~
11 ~~whose business is to provide to individuals in their places of~~
12 ~~residence other than in a hospital, nursing home, or county medical~~
13 ~~care facility 1 or more of the following services: nursing~~
14 ~~services, therapeutic services, social work services, homemaker~~
15 ~~services, home health aide services, or other related services.~~ **THAT**
16 **TERM AS DEFINED IN SECTION 20173A OF THE PUBLIC HEALTH CODE, 1978**
17 **PA 368, MCL 333.20173A.**

18 (g) "Independent contract" means a contract entered into by a
19 health facility or agency with an individual who provides the
20 contracted services independently or a contract entered into by a
21 health facility or agency with a staffing agency that complies with
22 the requirements of this section to provide the contracted services
23 to the psychiatric facility or other facility defined in 42 USC
24 1396d(d) on behalf of the staffing agency.

25 (h) "Medicare" means benefits under the federal medicare
26 program established under title XVIII of the social security act,
27 42 USC 1395 to 1395kkk-1.

1 (i) "Staffing agency" means an entity that recruits candidates
2 and provides temporary and permanent qualified staffing for
3 psychiatric facilities or other facility defined in 42 USC
4 1396d(d), including independent contractors.

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

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

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

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

17 (B) The tasks performed by the individual.

18 (C) The individual's work schedule.

19 (D) The supervision or evaluation of the individual's work or
20 job performance, including imposing discipline or granting
21 performance awards.

22 (E) The compensation the individual receives for performing
23 his or her duties.

24 (F) The conditions under which the individual performs his or
25 her duties.