

# HOUSE BILL No. 5450

January 25, 2018, Introduced by Reps. Kesto, Noble and VanderWall and referred to the Committee on Law and Justice.

A bill to amend 1978 PA 368, entitled "Public health code," by amending section 20173a (MCL 333.20173a), as amended by 2017 PA 167.

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

1           Sec. 20173a. (1) Except as otherwise provided in subsection  
2 (2), a covered facility shall not employ, independently contract  
3 with, or grant clinical privileges to an individual who regularly  
4 has direct access to or provides direct services to patients or  
5 residents in the covered facility if the individual satisfies 1 or  
6 more of the following:

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

9           (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~~10 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 before 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  
11 serious impairment of a body function, that results in death or  
12 serious impairment of a body function, that involves the use of  
13 force or violence, or that involves the threat of the use of force  
14 or 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 (C) ~~(d)~~ Has been convicted of any of the following  
6 misdemeanors, other than a misdemeanor for a relevant crime  
7 described under 42 USC 1320a-7(a), or a state or federal crime that  
8 is substantially similar to the misdemeanors described in this  
9 subdivision, within the ~~10~~5 years immediately preceding the date  
10 of application for employment or clinical privileges or the date of  
11 the execution of 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 ~~(vi) (ii) A misdemeanor involving home invasion.~~

6 ~~(vii) (iii) A misdemeanor involving embezzlement.~~

7 ~~(viii) (iv) A misdemeanor involving negligent homicide or a~~  
8 ~~violation of section 601d(1) of the Michigan vehicle code, 1949 PA~~  
9 ~~300, MCL 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,~~  
15 ~~or 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 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 if the individual, at the time~~  
 12 ~~of conviction, is under the age of 18.~~

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

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

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

23 (2) Except as otherwise provided in this subsection or  
 24 subsection (5), a covered facility shall not employ, independently  
 25 contract with, or grant privileges to an individual who regularly  
 26 has direct access to or provides direct services to patients or  
 27 residents in the covered facility until the covered facility or

1 staffing agency has a criminal history check conducted in  
2 compliance with this section or has received criminal history  
3 record information in compliance with subsections (3) and (10).  
4 This subsection and subsection (1) do not apply to any of the  
5 following:

6 (a) An individual who is employed by, under independent  
7 contract to, or granted clinical privileges in a covered facility  
8 before April 1, 2006. On or before April 1, 2011, an individual who  
9 is exempt under this subdivision and who has not been the subject  
10 of a criminal history check conducted in compliance with this  
11 section shall provide the department of state police with a set of  
12 fingerprints and the department of state police shall input those  
13 fingerprints into the automated fingerprint identification system  
14 database established under subsection (13). An individual who is  
15 exempt under this subdivision is not limited to working within the  
16 covered facility with which he or she is employed by, under  
17 independent contract to, or granted clinical privileges on April 1,  
18 2006 but may transfer to another covered facility, adult foster  
19 care facility, or mental health facility. If an individual who is  
20 exempt under this subdivision is subsequently convicted of a crime  
21 described under subsection (1) (a) to ~~(g)~~ **(C)** or found to be the  
22 subject of a substantiated finding described under subsection  
23 ~~(1) (i)~~ **(1) (E)** or an order or disposition described under subsection  
24 ~~(1) (h)~~ **(1) (D)**, or is found to have been convicted of a relevant  
25 crime described under 42 USC 1320a-7(a), then he or she is no  
26 longer exempt and shall be terminated from employment or denied  
27 employment or clinical privileges.

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

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

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

24 (4) Upon receipt of the written consent to conduct a criminal  
25 history check and identification required under subsection (3), a  
26 staffing agency or covered facility that has made a ~~good faith~~  
27 **GOOD-FAITH** offer of employment or an independent contract or



1 clinical privileges to the applicant shall make a request to the  
2 department of state police to conduct a criminal history check on  
3 the applicant, to input the applicant's fingerprints into the  
4 automated fingerprint identification system database, and to  
5 forward the applicant's fingerprints to the Federal Bureau of  
6 Investigation. The department of state police shall request the  
7 Federal Bureau of Investigation to make a determination of the  
8 existence of any national criminal history pertaining to the  
9 applicant. The applicant shall provide the department of state  
10 police with a set of fingerprints. The request shall be made in a  
11 manner prescribed by the department of state police. The staffing  
12 agency or covered facility shall make the written consent and  
13 identification available to the department of state police. The  
14 staffing agency or covered facility shall make a request regarding  
15 that applicant to the relevant licensing or regulatory department  
16 to conduct a check of all relevant registries established according  
17 to federal and state law and regulations for any substantiated  
18 findings of abuse, neglect, or misappropriation of property. If the  
19 department of state police or the Federal Bureau of Investigation  
20 charges a fee for conducting the criminal history check, the  
21 staffing agency or covered facility shall pay the cost of the  
22 charge. Except as otherwise provided in this subsection, if the  
23 department of state police or the Federal Bureau of Investigation  
24 charges a fee for conducting the criminal history check, the  
25 department shall pay the cost of or reimburse the charge for a  
26 covered facility that is a home for the aged. After October 1,  
27 2018, if the department of state police or the Federal Bureau of

1 Investigation charges a fee for conducting the criminal history  
2 check, the department shall pay the cost of the charge up to 40  
3 criminal history checks per year for a covered facility that is a  
4 home for the aged with fewer than 100 beds and 50 criminal history  
5 checks per year for a home for the aged with 100 beds or more. The  
6 staffing agency or covered facility shall not seek reimbursement  
7 for a charge imposed by the department of state police or the  
8 Federal Bureau of Investigation from the individual who is the  
9 subject of the criminal history check. A prospective employee or a  
10 prospective independent contractor covered under this section may  
11 not be charged for the cost of a criminal history check required  
12 under this section. The department of state police shall conduct a  
13 criminal history check on the applicant named in the request. The  
14 department of state police shall provide the department with a  
15 written report of the criminal history check conducted under this  
16 subsection. The report shall contain any criminal history record  
17 information on the applicant maintained by the department of state  
18 police. The department of state police shall provide the results of  
19 the Federal Bureau of Investigation determination to the department  
20 within 30 days after the request is made. If the requesting  
21 staffing agency or covered facility is not a state department or  
22 agency and if criminal history record information is disclosed on  
23 the written report of the criminal history check or the Federal  
24 Bureau of Investigation determination that resulted in a  
25 conviction, the department shall notify the staffing agency or  
26 covered facility and the applicant in writing of the type of crime  
27 disclosed on the written report of the criminal history check or

1 the Federal Bureau of Investigation determination without  
2 disclosing the details of the crime. Any charges imposed by the  
3 department of state police or the Federal Bureau of Investigation  
4 for conducting a criminal history check or making a determination  
5 under this subsection ~~shall~~**MUST** be paid in the manner required  
6 under this subsection. The notice ~~shall~~**MUST** include a statement  
7 that the applicant has a right to appeal the information relied  
8 upon by the staffing agency or covered facility in making its  
9 decision regarding his or her employment eligibility based on the  
10 criminal history check. The notice ~~shall~~**MUST** also include  
11 information regarding where to file and describing the appellate  
12 procedures established under section 20173b.

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

19 (a) The covered facility requests the criminal history check  
20 or criminal history record information under this section upon  
21 conditionally employing or conditionally granting clinical  
22 privileges to the individual.

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

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

1 respectively.

2 (ii) That he or she is not the subject of an order or  
3 disposition described in subsection ~~(1) (h)~~. **(1) (D)** .

4 (iii) That he or she has not been the subject of a  
5 substantiated finding as described in subsection ~~(1) (i)~~. **(1) (E)** .

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

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

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

1 may permit an individual in the covered facility on a conditional  
2 basis under this subsection to have regular direct access to or  
3 provide direct services to patients or residents in the covered  
4 facility without supervision if all of the following conditions are  
5 met:

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

15 (ii) Before the individual has direct access to or provides  
16 direct services to patients or residents of the covered facility,  
17 the individual signs a statement in writing that he or she has  
18 resided in this state without interruption for at least the  
19 immediately preceding 12-month period.

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

25 (6) The department shall develop and distribute a model form  
26 for the statements required under subsection (5) (b) and (c). The  
27 department shall make the model form available to covered

1 facilities upon request at no charge.

2 (7) If an individual is employed as a conditional employee or  
3 is granted conditional clinical privileges under subsection (5),  
4 and the information under subsection (3) or report under subsection  
5 (4) does not confirm the individual's statement under subsection  
6 (5) (b) (i) to (iii), the covered facility shall terminate the  
7 individual's employment or clinical privileges as required by  
8 subsection (1).

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

15 (9) A staffing agency or covered facility shall use criminal  
16 history record information obtained under subsection (3) or (4)  
17 only for the purpose of evaluating an applicant's qualifications  
18 for employment, an independent contract, or clinical privileges in  
19 the position for which he or she has applied and for the purposes  
20 of subsections (5) and (7). A staffing agency or covered facility  
21 or an employee of the staffing agency or covered facility shall not  
22 disclose criminal history record information obtained under  
23 subsection (3) or (4) to a person who is not directly involved in  
24 evaluating the applicant's qualifications for employment, an  
25 independent contract, or clinical privileges. An individual who  
26 knowingly uses or disseminates the criminal history record  
27 information obtained under subsection (3) or (4) in violation of

1 this subsection is guilty of a misdemeanor punishable by  
2 imprisonment for not more than 93 days or a fine of not more than  
3 \$1,000.00, or both. Except for a knowing or intentional release of  
4 false information, a staffing agency or covered facility has no  
5 liability in connection with a criminal history check conducted in  
6 compliance with this section or the release of criminal history  
7 record information under this subsection.

8 (10) Upon consent of an applicant as required in subsection  
9 (3) and upon request from a staffing agency or covered facility  
10 that has made a ~~good faith~~ **GOOD-FAITH** offer of employment or an  
11 independent contract or clinical privileges to the applicant, the  
12 relevant licensing or regulatory department shall review the  
13 criminal history record information, if any, and notify the  
14 requesting staffing agency or covered facility of the information  
15 in the manner prescribed in subsection (4). Until the department of  
16 state police can participate with the Federal Bureau of  
17 Investigation's automatic notification system similar to the system  
18 required of the state police under subsection (13) and federal  
19 regulations allow the federal criminal record to be used for  
20 subsequent authorized uses, as determined in an order issued by the  
21 department, a staffing agency or covered facility may rely on the  
22 criminal history record information provided by the relevant  
23 licensing or regulatory department under this subsection and a  
24 request to the Federal Bureau of Investigation to make a subsequent  
25 determination of the existence of any national criminal history  
26 pertaining to the applicant is not necessary if all of the  
27 following requirements are met:

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

3 (b) The applicant has been continuously employed by the  
4 staffing agency or a covered facility, adult foster care facility,  
5 or mental health facility since the criminal history check was  
6 conducted in compliance with this section or meets the continuous  
7 employment requirement of this subdivision other than being on  
8 layoff status for less than 1 year from a covered facility, adult  
9 foster care facility, or mental health facility.

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

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

17 (a) Agree in writing to report to the staffing agency or  
18 covered facility immediately upon being arraigned for 1 or more of  
19 the criminal offenses listed in subsection (1) (a) to ~~(g)~~, **(C)**, upon  
20 being convicted of 1 or more of the criminal offenses listed in  
21 subsection (1) (a) to ~~(g)~~, **(C)**, upon becoming the subject of an  
22 order or disposition described under subsection ~~(1) (h)~~, **(1) (D)**, and  
23 upon being the subject of a substantiated finding of neglect,  
24 abuse, or misappropriation of property as described in subsection  
25 ~~(1) (i)~~. **(1) (E)**. Reporting of an arraignment under this subdivision  
26 is not cause for termination or denial of employment.

27 (b) If a set of fingerprints is not already on file with the



1 department of state police, provide the department of state police  
2 with a set of fingerprints.

3 (12) In addition to sanctions set forth in section 20165, a  
4 licensee, owner, administrator, or operator of a staffing agency or  
5 covered facility who knowingly and willfully fails to conduct the  
6 criminal history checks as required under this section is guilty of  
7 a misdemeanor punishable by imprisonment for not more than 1 year  
8 or a fine of not more than \$5,000.00, or both.

9 (13) The department of state police and the Federal Bureau of  
10 Investigation shall store and retain all fingerprints submitted  
11 under this section and provide for an automatic notification if and  
12 when subsequent criminal information submitted into the system  
13 matches a set of fingerprints previously submitted under this  
14 section. Upon ~~such~~ **RECEIVING THAT** notification, the department of  
15 state police shall immediately notify the department and the  
16 department shall immediately contact each respective staffing  
17 agency or covered facility with which that individual is  
18 associated. Information in the database established under this  
19 subsection is confidential, is not subject to disclosure under the  
20 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and  
21 shall not be disclosed to any person except for purposes of this  
22 act or for law enforcement purposes.

23 (14) The department shall maintain an electronic web-based  
24 system to assist staffing agencies and covered facilities required  
25 to check relevant registries and conduct criminal history checks of  
26 its employees, independent contractors, and individuals granted  
27 privileges and to provide for an automated notice to those staffing

1 agencies and covered facilities for those individuals inputted in  
2 the system who, since the initial criminal history check, have been  
3 convicted of a disqualifying offense or have been the subject of a  
4 substantiated finding of abuse, neglect, or misappropriation of  
5 property. The department may charge a staffing agency a 1-time set-  
6 up fee of up to \$100.00 for access to the electronic web-based  
7 system under this section.

8 (15) As used in this section:

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

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

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

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

22 (c) "Covered facility" means a health facility or agency that  
23 is a nursing home, county medical care facility, hospice, hospital  
24 that provides swing bed services, home for the aged, or home health  
25 agency.

26 (d) "Criminal history check conducted in compliance with this  
27 section" includes a criminal history check conducted under this

1 section, under section 134a of the mental health code, 1974 PA 258,  
2 MCL 330.1134a, or under section 34b of the adult foster care  
3 facility licensing act, 1979 PA 218, MCL 400.734b.

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

8 (f) "Home health agency" means a person certified by Medicare  
9 whose business is to provide to individuals in their places of  
10 residence other than in a hospital, nursing home, or county medical  
11 care facility 1 or more of the following services: nursing  
12 services, therapeutic services, social work services, homemaker  
13 services, home health aide services, or other related services.

14 (g) "Independent contract" means a contract entered into by a  
15 covered facility with an individual who provides the contracted  
16 services independently or a contract entered into by a covered  
17 facility with a staffing agency that complies with the requirements  
18 of this section to provide the contracted services to the covered  
19 facility on behalf of the staffing agency.

20 (h) "Medicare" means benefits under the federal Medicare  
21 program established under title XVIII of the social security act,  
22 42 USC 1395 to 1395III.

23 (i) "Mental health facility" means a psychiatric facility or  
24 other facility defined in 42 USC 1396d(d) as described under the  
25 mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

26 (j) "Staffing agency" means an entity that recruits candidates  
27 and provides temporary and permanent qualified staffing for covered

1 facilities, including independent contractors.

2 (k) "Under the facility's control" means an individual  
3 employed by or under independent contract with a covered facility  
4 for whom the covered facility does both of the following:

5 (i) Determines whether the individual who has access to  
6 patients or residents may provide care, treatment, or other similar  
7 support service functions to patients or residents served by the  
8 covered facility.

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

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

12 (B) The tasks performed by the individual.

13 (C) The individual's work schedule.

14 (D) The supervision or evaluation of the individual's work or  
15 job performance, including imposing discipline or granting  
16 performance awards.

17 (E) The compensation the individual receives for performing  
18 his or her duties.

19 (F) The conditions under which the individual performs his or  
20 her duties.

21 Enacting section 1. This amendatory act takes effect 90 days  
22 after the date it is enacted into law.

23 Enacting section 2. This amendatory act does not take effect  
24 unless all of the following bills of the 99th Legislature are  
25 enacted into law:

26 (a) Senate Bill No. \_\_\_\_ or House Bill No. 5452 (request no.  
27 04032'17).

1 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 5451 (request no.  
2 04033'17).