

# HOUSE BILL NO. 4474

March 09, 2021, Introduced by Reps. Wakeman, Anthony, Garza, Farrington, Tisdell, Witwer, Camilleri, Brixie, Manoogian, Bolden, Brenda Carter, Stone, Puri, Sneller, Yaroch, O'Neal, Kuppa, Pohutsky, Ellison, Scott, Aiyash, Breen, Neeley, Young, Brabec, Whitsett, Liberati, Cherry, Clemente, Haadsma, Bezotte, Kahle, Lightner, Bellino, Coleman, Jones and Wozniak and referred to the Committee on Families, Children, and Seniors.

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

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

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

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

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

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

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

20 (ii) A felony involving cruelty or torture.

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

23 (iv) A felony involving criminal sexual conduct.

24 (v) A felony involving abuse or neglect.

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

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

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

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

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

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

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

22 (iii) A misdemeanor involving criminal sexual conduct.

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

25 (v) A misdemeanor involving abuse or neglect.

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

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

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

6 (ii) A misdemeanor involving home invasion.

7 (iii) A misdemeanor involving embezzlement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (b) An individual who is under an independent contract with a  
2 psychiatric facility or other facility defined in 42 USC 1396d(d)  
3 if he or she is not under the facility's control and the services  
4 for which he or she is contracted is not directly related to the  
5 provision of services to a patient or resident or if the services  
6 for which he or she is contracted allows for direct access to the  
7 patients or residents but is not performed on an ongoing basis.  
8 This exception includes, but is not limited to, an individual who  
9 is under an independent contract with the psychiatric facility or  
10 other facility defined in 42 USC 1396d(d) to provide utility,  
11 maintenance, construction, or 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 psychiatric facility or other facility defined in 42 USC  
15 1396d(d) or a staffing agency and who has not been the subject of a  
16 criminal history check conducted in compliance with this section  
17 shall give written consent at the time of application for the  
18 department of state police to conduct a criminal history check  
19 under this section, along with identification acceptable to the  
20 department of state police. If the applicant has been the subject  
21 of a criminal history check conducted in compliance with this  
22 section, the applicant shall give written consent at the time of  
23 application for the psychiatric facility or other facility defined  
24 in 42 USC 1396d(d) or staffing agency to obtain the criminal  
25 history record information as prescribed in subsection (4) from the  
26 relevant licensing or regulatory department and for the department  
27 of state police to conduct a criminal history check under this  
28 section if the requirements of subsection (10) are not met and a  
29 request to the ~~federal bureau of investigation~~ **Federal Bureau of**

**Investigation** to make a determination of the existence of any national criminal history pertaining to the applicant is necessary, along with identification acceptable to the department of state police. Upon receipt of the written consent to obtain the criminal history record information and identification required under this subsection, the psychiatric facility or other facility defined in 42 USC 1396d(d) or staffing agency that has made a good-faith offer of employment or an independent contract or clinical privileges to the applicant shall request the criminal history record information from the relevant licensing or regulatory department and shall make a request regarding that applicant to the relevant licensing or regulatory department to conduct a check of all relevant registries in the manner required in subsection (4). If the requirements of subsection (10) are not met and a request to the ~~federal bureau of investigation~~ **Federal Bureau of Investigation** to make a subsequent determination of the existence of any national criminal history pertaining to the applicant is necessary, the psychiatric facility or other facility defined in 42 USC 1396d(d) or staffing agency shall proceed in the manner required in subsection (4). A staffing agency that employs an applicant who regularly has direct access to or provides direct services to patients or residents under an independent contract with a psychiatric facility or other facility defined in 42 USC 1396d(d) shall submit information regarding the criminal history check conducted by the staffing agency to the psychiatric facility or other facility defined in 42 USC 1396d(d) that has made a good-faith offer of independent contract to that applicant.

(4) Upon receipt of the written consent to conduct a criminal history check and identification required under subsection (3), a



1 psychiatric facility or other facility defined in 42 USC 1396d(d)  
2 or staffing agency that has made a good-faith offer of employment  
3 or an independent contract or clinical privileges to the applicant  
4 shall make a request to the department of state police to conduct a  
5 criminal history check on the applicant, to input the applicant's  
6 fingerprints into the automated fingerprint identification system  
7 database, and to forward the applicant's fingerprints to the  
8 ~~federal bureau of investigation.~~ **Federal Bureau of Investigation.**

9 The department of state police shall request the ~~federal bureau of~~  
10 ~~investigation~~ **Federal Bureau of Investigation** to make a  
11 determination of the existence of any national criminal history  
12 pertaining to the applicant. The applicant shall provide the  
13 department of state police with a set of fingerprints. The request  
14 ~~shall~~ **must** be made in a manner prescribed by the department of  
15 state police. The psychiatric facility or other facility defined in  
16 42 USC 1396d(d) or staffing agency shall make the written consent  
17 and identification available to the department of state police. The  
18 psychiatric facility or other facility defined in 42 USC 1396d(d)  
19 or staffing agency shall make a request regarding that applicant to  
20 the relevant licensing or regulatory department to conduct a check  
21 of all relevant registries established under federal and state law  
22 and regulations for any substantiated findings of abuse, neglect,  
23 or misappropriation of property. If the department of state police  
24 or the ~~federal bureau of investigation~~ **Federal Bureau of**  
25 **Investigation** charges a fee for conducting the criminal history  
26 check, the psychiatric facility or other facility defined in 42 USC  
27 1396d(d) or staffing agency shall pay the cost of the charge. The  
28 psychiatric facility or other facility defined in 42 USC 1396d(d)  
29 or staffing agency shall not seek reimbursement for a charge

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

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

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

18 (a) The psychiatric facility or other facility defined in 42  
19 USC 1396d(d) requests the criminal history check or criminal  
20 history record information under this section upon conditionally  
21 employing or conditionally granting clinical privileges to the  
22 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) through (g) within  
27 the applicable time period prescribed by each subdivision  
28 respectively.

29 (ii) That he or she is not the subject of an order or

1 disposition described in subsection (1)(h).

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

4 (iv) The individual agrees that, if the information in the  
5 criminal history check conducted under this section does not  
6 confirm the individual's statements under subparagraphs (i) through  
7 (iii), his or her employment or clinical privileges will be  
8 terminated by the psychiatric facility or other facility defined in  
9 42 USC 1396d(d) as required under subsection (1) unless and until  
10 the individual appeals and can prove that the information is  
11 incorrect.

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

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

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

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

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

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

28 (6) The department shall develop and distribute a model form  
29 for the statements required under subsection (5) (b) and (c). The

1 department shall make the model form available to psychiatric  
2 facilities or other facility defined in 42 USC 1396d(d) subject to  
3 this section upon request at no charge.

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

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

17 (9) A psychiatric facility or other facility defined in 42 USC  
18 1396d(d) or staffing agency shall use criminal history record  
19 information obtained under subsection (3) or (4) only for the  
20 purpose of evaluating an applicant's qualifications for employment,  
21 an independent contract, or clinical privileges in the position for  
22 which he or she has applied and for the purposes of subsections (5)  
23 and (7). A psychiatric facility or other facility defined in 42 USC  
24 1396d(d) or staffing agency or an employee of the psychiatric  
25 facility or other facility defined in 42 USC 1396d(d) or staffing  
26 agency shall not disclose criminal history record information  
27 obtained under subsection (3) or (4) to a person who is not  
28 directly involved in evaluating the applicant's qualifications for  
29 employment, an independent contract, or clinical privileges. An

1 individual who knowingly uses or disseminates the criminal history  
2 record information obtained under subsection (3) or (4) in  
3 violation of this subsection is guilty of a misdemeanor punishable  
4 by imprisonment for not more than 93 days or a fine of not more  
5 than \$1,000.00, or both. Except for a knowing or intentional  
6 release of false information, a psychiatric facility or other  
7 facility defined in 42 USC 1396d(d) or staffing agency has no  
8 liability in connection with a criminal history check conducted in  
9 compliance with this section or the release of criminal history  
10 record information under this subsection.

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

1 pertaining to the applicant is not necessary if all of the  
2 following requirements are met:

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

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

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

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

21 (a) Agree in writing to report to the psychiatric facility or  
22 other facility defined in 42 USC 1396d(d) or staffing agency  
23 immediately upon being arraigned for 1 or more of the criminal  
24 offenses listed in subsection (1)(a) through (g), upon being  
25 convicted of 1 or more of the criminal offenses listed in  
26 subsection (1)(a) through (g), upon becoming the subject of an  
27 order or disposition described under subsection (1)(h), and upon  
28 being the subject of a substantiated finding of neglect, abuse, or  
29 misappropriation of property as described in subsection (1)(i).



1 Reporting of an arraignment under this subdivision is not cause for  
2 termination or denial of employment.

3 (b) If a set of fingerprints is not already on file with the  
4 department of state police, provide the department of state police  
5 with a set of fingerprints.

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

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

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

14           (15) As used in this section:

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

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

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

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

28           (c) "Covered health facility" means a nursing home, county  
29 medical care facility, hospice, hospital that provides swing bed

1 services, or home for the aged licensed under article 17 of the  
2 public health code, 1978 PA 368, MCL 333.20101 to 333.22260, or  
3 home health agency.

4 (d) "Criminal history check conducted in compliance with this  
5 section" includes a criminal history check conducted under this  
6 section, under section 20173a of the public health code, 1978 PA  
7 ~~3658~~, **368**, MCL 333.20173a, or under section 34b of the adult foster  
8 care facility licensing act, 1979 PA 218, MCL 400.734b.

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

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

20 (g) "Independent contract" means a contract entered into by a  
21 health facility or agency with an individual who provides the  
22 contracted services independently or a contract entered into by a  
23 health facility or agency with a staffing agency that complies with  
24 the requirements of this section to provide the contracted services  
25 to the psychiatric facility or other facility defined in 42 USC  
26 1396d(d) on behalf of the staffing agency.

27 (h) "Medicare" means benefits under the federal ~~medicare~~  
28 **Medicare** program established under title XVIII of the social  
29 security act, 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.

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

28 Enacting section 2. This amendatory act does not take effect  
29 unless Senate Bill No. \_\_\_\_ or House Bill No. 4473 (request no.

**1** 01188'21) of the 101st Legislature is enacted into law.