

MENTAL HEALTH CODE (EXCERPT)
Act 258 of 1974

***** 330.1134a.added THIS ADDED SECTION IS EFFECTIVE APRIL 1, 2006 *****

330.1134a.added Employing, contracting, or granting clinical privileges to individuals; prohibitions; criminal history check; conditional employment or granting clinical privileges; false information; use of information obtained under subsection (4); condition of continued employment; failure to conduct criminal history check; establishment of automated fingerprint identification system database; report to legislature; web-based system; definitions.

Sec. 134a. (1) Except as otherwise provided in subsection (2), a psychiatric facility or intermediate care facility for people with mental retardation shall not employ, independently contract with, or grant clinical privileges to an individual who regularly has direct access to or provides direct services to patients or residents in the psychiatric facility or intermediate care facility for people with mental retardation after the effective date of this section if the individual satisfies 1 or more of the following:

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

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

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

(ii) A felony involving cruelty or torture.

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

(iv) A felony involving criminal sexual conduct.

(v) A felony involving abuse or neglect.

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

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

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

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

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

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

(iii) A misdemeanor involving criminal sexual conduct.

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

(v) A misdemeanor involving abuse or neglect.

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

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

(ii) A misdemeanor involving home invasion.

(iii) A misdemeanor involving embezzlement.

(iv) A misdemeanor involving negligent homicide.

(v) A misdemeanor involving larceny unless otherwise provided under subdivision (g).
(vi) A misdemeanor of retail fraud in the second degree unless otherwise provided under subdivision (g).
(vii) Any other misdemeanor involving assault, fraud, theft, or the possession or delivery of a controlled substance unless otherwise provided under subdivision (d), (f), or (g).

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

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

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

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

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

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

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

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

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

(2) Except as otherwise provided in subsection (5), a psychiatric facility or intermediate care facility for people with mental retardation shall not employ, independently contract with, or grant privileges to an individual who regularly has direct access to or provides direct services to patients or residents in the psychiatric facility or intermediate care facility for people with mental retardation after the effective date of this section until the psychiatric facility or intermediate care facility for people with mental retardation conducts a criminal history check in compliance with subsection (4). This subsection and subsection (1) do not apply to any of the following:

(a) An individual who is employed by, under independent contract to, or granted clinical privileges in a psychiatric facility or intermediate care facility for people with mental retardation before the effective date of this section. Within 24 months after the effective date of this section, an individual who is exempt under this subdivision shall provide the department of state police with a set of fingerprints and the department of state police shall input those fingerprints into the automated fingerprint identification system database established under subsection (12). An individual who is exempt under this subdivision is not limited to working within the psychiatric facility or intermediate care facility for people with mental retardation with which he or she is employed by, under independent contract to, or granted clinical privileges on the effective date of this section. That individual may transfer to another psychiatric facility or intermediate care facility for people with mental retardation that is under the same ownership with which he or she was employed, under contract, or granted privileges. If that individual wishes to transfer to another psychiatric facility or intermediate care facility for people with mental retardation that is not under the same ownership, he or she may do so provided that a criminal history check is conducted by the new psychiatric facility or intermediate care facility for people with mental retardation in accordance with subsection (4). If an individual who is exempt under this subdivision is subsequently convicted of a crime described under subsection (1)(a) through (g) or found to be the subject of a substantiated finding described under subsection (1)(i) or an order or disposition described under subsection (1)(h), or is found to have been convicted of a relevant crime described under subsection (1)(a), then he or she is no longer exempt and shall be terminated from employment or denied employment.

(b) An individual who is an independent contractor with a psychiatric facility or intermediate care facility for people with mental retardation if the services for which he or she is contracted is not directly related to the provision of services to a patient or resident or if the services for which he or she is contracted allows for direct access to the patients or residents but is not performed on an ongoing basis. This exception includes, but is not limited to, an individual who independently contracts with the psychiatric facility or intermediate care facility for people with mental retardation to provide utility, maintenance, construction, or communications services.

(3) An individual who applies for employment either as an employee or as an independent contractor or for

clinical privileges with a psychiatric facility or intermediate care facility for people with mental retardation and has received a good faith offer of employment, an independent contract, or clinical privileges from the psychiatric facility or intermediate care facility for people with mental retardation shall give written consent at the time of application for the department of state police to conduct an initial criminal history check under this section, along with identification acceptable to the department of state police.

(4) Upon receipt of the written consent and identification required under subsection (3), a psychiatric facility or intermediate care facility for people with mental retardation that has made a good faith offer of employment or an independent contract or clinical privileges to the applicant shall make a request to the department of state police to conduct a criminal history check on the applicant, to input the applicant's fingerprints into the automated fingerprint identification system database, and to forward the applicant's fingerprints to the federal bureau of investigation. The department of state police shall request the federal bureau of investigation to make a determination of the existence of any national criminal history pertaining to the applicant. The applicant shall provide the department of state police with a set of fingerprints. The request shall be made in a manner prescribed by the department of state police. The psychiatric facility or intermediate care facility for people with mental retardation shall make the written consent and identification available to the department of state police. The psychiatric facility or intermediate care facility for people with mental retardation shall make a request to the relevant licensing or regulatory department to conduct a check of all relevant registries established pursuant to federal and state law and regulations for any substantiated findings of abuse, neglect, or misappropriation of property. If the department of state police or the federal bureau of investigation charges a fee for conducting the initial criminal history check, the charge shall be paid by or reimbursed by the department with federal funds as provided to implement a pilot program for national and state background checks on direct patient access employees of long-term care facilities or providers in accordance with section 307 of the medicare prescription drug, improvement, and modernization act of 2003, Public Law 108-173. The psychiatric facility or intermediate care facility for people with mental retardation shall not seek reimbursement for a charge imposed by the department of state police or the federal bureau of investigation from the individual who is the subject of the initial criminal history check. A psychiatric facility or intermediate care facility for people with mental retardation, a prospective employee, or a prospective independent contractor covered under this section may not be charged for the cost of an initial criminal history check required under this section. The department of state police shall conduct a criminal history check on the applicant named in the request. The department of state police shall provide the department with a written report of the criminal history check conducted under this subsection if the criminal history check contains any criminal history record information. The report shall contain any criminal history record information on the applicant maintained by the department of state police. The department of state police shall provide the results of the federal bureau of investigation determination to the department within 30 days after the request is made. If the requesting psychiatric facility or intermediate care facility for people with mental retardation is not a state department or agency and if a criminal conviction is disclosed on the written report of the criminal history check or the federal bureau of investigation determination, the department shall notify the psychiatric facility or intermediate care facility for people with mental retardation and the applicant in writing of the type of crime disclosed on the written report of the criminal history check or the federal bureau of investigation determination without disclosing the details of the crime. Any charges imposed by the department of state police or the federal bureau of investigation for conducting an initial criminal history check or making a determination under this subsection shall be paid in the manner required under this subsection. The notice shall include a statement that the applicant has a right to appeal a decision made by the psychiatric facility or intermediate care facility for people with mental retardation regarding his or her employment eligibility based on the criminal background check. The notice shall also include information regarding where to file and describing the appellate procedures established under section 20173b of the public health code, 1978 PA 368, MCL 333.20173b.

(5) If a psychiatric facility or intermediate care facility for people with mental retardation determines it necessary to employ or grant clinical privileges to an applicant before receiving the results of the applicant's criminal history check under this section, the psychiatric facility or intermediate care facility for people with mental retardation may conditionally employ or grant conditional clinical privileges to the individual if all of the following apply:

(a) The psychiatric facility or intermediate care facility for people with mental retardation requests the criminal history check under this section upon conditionally employing or conditionally granting clinical privileges to the individual.

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

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

- (ii) That he or she is not the subject of an order or disposition described in subsection (1)(h).
- (iii) That he or she has not been the subject of a substantiated finding as described in subsection (1)(i).
- (iv) The individual agrees that, if the information in the criminal history check conducted under this section does not confirm the individual's statements under subparagraphs (i) through (iii), his or her employment or clinical privileges will be terminated by the psychiatric facility or intermediate care facility for people with mental retardation as required under subsection (1) unless and until the individual appeals and can prove that the information is incorrect.
- (v) That he or she understands the conditions described in subparagraphs (i) through (iv) that result in the termination of his or her employment or clinical privileges and that those conditions are good cause for termination.
- (6) The department shall develop and distribute a model form for the statement required under subsection (5)(b). The department shall make the model form available to psychiatric facilities or intermediate care facilities for people with mental retardation subject to this section upon request at no charge.
- (7) If an individual is employed as a conditional employee or is granted conditional clinical privileges under subsection (5), and the report described in subsection (4) does not confirm the individual's statement under subsection (5)(b)(i) through (iii), the psychiatric facility or intermediate care facility for people with mental retardation shall terminate the individual's employment or clinical privileges as required by subsection (1).
- (8) An individual who knowingly provides false information regarding his or her identity, criminal convictions, or substantiated findings on a statement described in subsection (5)(b)(i) through (iii) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.
- (9) A psychiatric facility or intermediate care facility for people with mental retardation shall use criminal history record information obtained under subsection (4) only for the purpose of evaluating an applicant's qualifications for employment, an independent contract, or clinical privileges in the position for which he or she has applied and for the purposes of subsections (5) and (7). A psychiatric facility or intermediate care facility for people with mental retardation or an employee of the psychiatric facility or intermediate care facility for people with mental retardation shall not disclose criminal history record information obtained under subsection (4) to a person who is not directly involved in evaluating the applicant's qualifications for employment, an independent contract, or clinical privileges. An individual who knowingly uses or disseminates the criminal history record information obtained under subsection (4) in violation of this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000.00, or both. Upon written request from another psychiatric facility or intermediate care facility for people with mental retardation, health facility or agency, or adult foster care facility that is considering employing, independently contracting with, or granting clinical privileges to an individual, a psychiatric facility or intermediate care facility for people with mental retardation that has obtained criminal history record information under this section on that individual shall, with the consent of the applicant, share the information with the requesting psychiatric facility or intermediate care facility for people with mental retardation, health facility or agency, or adult foster care facility. Except for a knowing or intentional release of false information, a psychiatric facility or intermediate care facility for people with mental retardation has no liability in connection with a criminal background check conducted under this section or the release of criminal history record information under this subsection.
- (10) As a condition of continued employment, each employee, independent contractor, or individual granted clinical privileges shall do each of the following:
- (a) Agree in writing to report to the psychiatric facility or intermediate care facility for people with mental retardation immediately upon being arraigned for 1 or more of the criminal offenses listed in subsection (1)(a) through (g), upon being convicted of 1 or more of the criminal offenses listed in subsection (1)(a) through (g), upon becoming the subject of an order or disposition described under subsection (1)(h), and upon being the subject of a substantiated finding of neglect, abuse, or misappropriation of property as described in subsection (1)(i). Reporting of an arraignment under this subdivision is not cause for termination or denial of employment.
- (b) If a set of fingerprints is not already on file with the department of state police, provide the department of state police with a set of fingerprints.
- (11) In addition to sanctions set forth in this act, a licensee, owner, administrator, or operator of a psychiatric facility or intermediate care facility for people with mental retardation who knowingly and willfully fails to conduct the criminal history checks as required under this section is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$5,000.00, or both.
- (12) In collaboration with the department of state police, the department of information technology shall

establish an automated fingerprint identification system database that would allow the department of state police to store and maintain all fingerprints submitted under this section and would provide for an automatic notification if and when a subsequent criminal arrest fingerprint card submitted into the system matches a set of fingerprints previously submitted in accordance with this section. Upon such notification, the department of state police shall immediately notify the department and the department shall immediately contact the respective psychiatric facility or intermediate care facility for people with mental retardation with which that individual is associated. Information in the database established under this subsection is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes.

(13) Within 1 year after the effective date of the amendatory act that added this section, the department shall submit a written report to the legislature regarding each of the following:

(a) The impact and effectiveness of this amendatory act.

(b) The feasibility of implementing criminal history checks on volunteers who work in those psychiatric facilities or intermediate care facilities for people with mental retardation and on state agency employees who are involved in the licensing of those psychiatric facilities or intermediate care facilities for people with mental retardation and regulation of those employees.

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

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

(15) By March 1, 2007, the department and the department of state police shall develop and implement an electronic web-based system to assist those psychiatric facilities or intermediate care facilities for people with mental retardation required to check relevant registries and conduct criminal history checks of its employees and independent contractors and to provide for an automated notice to those psychiatric facilities or intermediate care facilities for people with mental retardation for those individuals inputted in the system who, since the initial check, have been convicted of a disqualifying offense or have been the subject of a substantiated finding of abuse, neglect, or misappropriation of property.

(16) As used in this section:

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

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

(c) "Health facility or agency" means a health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency and licensed as required under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

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

(e) "Independent contract" means a contract entered into by a health facility or agency with an individual who provides the contracted services independently or a contract entered into by a health facility or agency with an organization or agency that employs or contracts with an individual after complying with the requirements of this section to provide the contracted services to the health facility or agency on behalf of the organization or agency.

(f) "Medicare" means benefits under the federal medicare program established under title XVIII of the social security act, 42 USC 1395 to 1395ggg.

History: Add. 2006, Act 27, Eff. Apr. 1, 2006.

Compiler's note: Enacting section 1 of Act 27 of 2006 provides:

"Enacting section 1. Section 134a of the mental health code, 1974 PA 258, MCL 330.1134a, as added by this amendatory act, takes effect April 1, 2006, since the department has secured the necessary federal approval to utilize federal funds to reimburse those facilities for the costs incurred for requesting a national criminal history check to be conducted by the federal bureau of investigation and the department has filed written notice of that approval with the secretary of state."