A bill to amend 1978 PA 368, entitled "Public health code,"
by amending sections 20106, 20156, 20173a, and 21311 (MCL
333.20106, 333.20156, 333.20173a, and 333.21311), section 20106 as
amended by 2015 PA 104, section 20156 as amended by 2006 PA 195,
section 20173a as amended by 2014 PA 66, and section 21311 as
amended by 2004 PA 74, and by adding sections 21302 and 21311a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 20106. (1) "Health facility or agency", except as
provided in section 20115, means:

(a) An ambulance operation, aircraft transport operation,
nontransport prehospital life support operation, or medical first
response service.

(b) A county medical care facility.
(c) A freestanding surgical outpatient facility.
(d) A health maintenance organization.
(e) A home for the aged.
(f) A hospital.
(g) A nursing home.
(h) A hospice.
(i) A hospice residence.
(j) A facility or agency listed in subdivisions (a) to (g) located in a university, college, or other educational institution.

(2) "Health maintenance organization" means that term as defined in section 3501 of the insurance code of 1956, 1956 PA 218, MCL 500.3501.

(3) "Home for the aged" means a supervised personal care facility AT A SINGLE ADDRESS, other than a hotel, adult foster care facility, hospital, nursing home, or county medical care facility that provides room, board, and supervised personal care to 21 or more unrelated, nontransient, individuals 60–55 years of age or older. Home for the aged includes a supervised personal care facility for 20 or fewer individuals 60–55 years of age or older if the facility is operated in conjunction with and as a distinct part of a licensed nursing home. Home for the aged does not include an area excluded from this definition by section 17(3) of the continuing care community disclosure act, 2014 PA 448, MCL 554.917.

(4) "Hospice" means a health care program that provides a coordinated set of services rendered at home or in outpatient or institutional settings for individuals suffering from a disease or condition with a terminal prognosis.
(5) "Hospital" means a facility offering inpatient, overnight care, and services for observation, diagnosis, and active treatment of an individual with a medical, surgical, obstetric, chronic, or rehabilitative condition requiring the daily direction or supervision of a physician. Hospital does not include a mental health hospital licensed or operated by the department of community health AND HUMAN SERVICES or a hospital operated by the department of corrections.

(6) "Hospital long-term care unit" means a nursing care facility, owned and operated by and as part of a hospital, providing organized nursing care and medical treatment to 7 or more unrelated individuals suffering or recovering from illness, injury, or infirmity.

Sec. 20156. (1) A representative of the department or the bureau of fire services created in section 1b of the fire prevention code, 1941 PA 207, MCL 29.1b, upon presentation of proper identification, may enter the premises of an applicant or licensee at any reasonable time to determine whether the applicant or licensee meets the requirements of this article and the rules promulgated under this article. The director; the director of the department of HEALTH AND human services; the bureau of fire services; the director of the office of services to the aging; or the director of a local health department; or an authorized representative of the director, the director of the department of HEALTH AND human services, the bureau of fire services, the director of the office of services to the aging, or the director of a local health department may enter on the premises of an applicant
or licensee under part 217 at any time in the course of carrying
out program responsibilities.

(2) The bureau of fire services created in section 1b of the
fire prevention code, 1941 PA 207, MCL 29.1b, shall enforce rules
promulgated by the bureau of fire services for health facilities
and agencies to assure—ENSURE that physical facilities owned,
maintained, or operated by a health facility or agency are planned,
constructed, and maintained in a manner to protect the health,
safety, and welfare of patients.

(3) BEGINNING ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
ADDED THIS SUBSECTION, THE BUREAU OF FIRE SERVICES SHALL AMEND THE
RULES TO ALLOW FACILITIES IN EXISTENCE ON OR BEFORE THE EFFECTIVE
DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION AND
CONTINUOUSLY OPERATING UP TO THE TIME OF APPLICATION FOR A HOME FOR
THE AGED LICENSE TO BE REVIEWED AND INSPECTED TO COMPLY WITH THE
PROVISIONS OF CHAPTER 18 OR 19 OR CHAPTER 32 OR 33 OF THE NATIONAL
FIRE PROTECTION ASSOCIATION STANDARD NUMBER 101. CHAPTER 32 OR 33
OF THE NATIONAL FIRE PROTECTION ASSOCIATION STANDARD NUMBER 101
ONLY APPLIES IF RESIDENTS ARE ASSESSED AS CAPABLE OF SELF-
PRESERVATION OR THE FACILITY IS ADEQUATELY STAFFED TO EVACUATE
RESIDENTS IN AN EMERGENCY.

(4) AN APPLICANT UNDER SUBSECTION (3) SHALL PROVIDE
INFORMATION REQUESTED BY THE DEPARTMENT THAT ALLOWS THE DEPARTMENT
TO VERIFY THAT THE FACILITY WAS IN EXISTENCE ON OR BEFORE THE
EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION AND
HAS BEEN CONTINUOUSLY OPERATING UP TO THE TIME OF APPLICATION.

(5) (3)—The department shall not issue a license or
certificate to a health facility or agency until it receives an appropriate certificate of approval from the bureau of fire services. For purposes of this section, a decision of the bureau of fire services to issue a certificate controls over that of a local fire department.

(6) (4) Subsections (2), and (3), (4), AND (5) do not apply to a health facility or an agency licensed under part 205 or 209. Sec. 20173a. (1) Except as otherwise provided in subsection (2), a covered facility 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 covered facility if the individual satisfies 1 or more of the following:

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

(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(a), 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(a) 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(a), 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(a), 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 or a violation
of section 601d(1) of the Michigan vehicle code, 1949 PA 300, MCL
257.601d.

(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(a), 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 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(a), 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 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) Engages in conduct that becomes 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 this subsection or subsection (5), a covered facility 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 covered facility until the covered facility or staffing agency has a criminal history check conducted in compliance with this section or has received criminal history record information in compliance with subsections (3) and (10). 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 covered facility before April 1, 2006. On or before April 1, 2011, an individual who is exempt under this subdivision and who has not been the subject of a criminal history check conducted in compliance with this section 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 (13). An individual who is exempt under this subdivision is not limited to working within the covered facility with which he or she is employed by, under independent contract to, or granted clinical privileges on April 1, 2006 but may transfer to another covered facility, adult foster care facility, or mental health facility. If an individual who is exempt under this subdivision is subsequently convicted of a crime described under subsection (1)(a) to (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 42 USC 1320a-7(a), then he or she is no longer exempt and shall be terminated from employment or denied employment or clinical privileges.

(b) An individual who is under an independent contract with a covered facility if he or she is not under the facility's control and the services for which he or she is contracted are not directly related to the provision of services to a patient or resident or if the services for which he or she is contracted allow for direct access to the patients or residents but are not performed on an ongoing basis. This exception includes, but is not limited to, an individual who is under an independent contract with the covered facility 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 staffing agency or covered facility and who has not been the subject of a criminal history check conducted in compliance with this section shall give written consent at the time of application for the department of state police to conduct a criminal history check under this section, along with identification acceptable to the department of state police. If the applicant has been the subject of a criminal history check conducted in compliance with this section, the applicant shall give written consent at the time of application for the covered facility or staffing agency to obtain the criminal history record information as prescribed in subsection (4) from the relevant licensing or regulatory department and for the department of state police to conduct a criminal history check under this section 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 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 staffing agency or covered facility 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 covered facility or staffing agency shall proceed in the manner required in subsection (4). A staffing agency that employs an individual who regularly has direct access to or provides direct services to patients or residents under an independent contract with a covered facility shall submit information regarding the criminal history check conducted by the staffing agency to the covered facility 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 staffing agency or covered facility 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—FEDERAL BUREAU OF INVESTIGATION. The department of state police shall request 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. 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 staffing
agency or covered facility shall make the written consent and
identification available to the department of state police. The
staffing agency or covered facility shall make a request regarding
that applicant to the relevant licensing or regulatory department
to conduct a check of all relevant registries established pursuant
ACCORDING 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—FEDERAL BUREAU OF INVESTIGATION charges a fee for
conducting the criminal history check, the staffing agency or
covered facility shall pay the cost of the charge. IF—EXCEPT AS
OTHERWISE PROVIDED IN THIS SUBSECTION, IF the department of state
police or the federal bureau of investigation—FEDERAL BUREAU OF
INVESTIGATION charges a fee for conducting the criminal history
check, the department shall pay the cost of or reimburse the charge
for a covered facility that is a home for the aged. AFTER OCTOBER
1, 2018, IF THE DEPARTMENT OF STATE POLICE OR THE FEDERAL BUREAU OF
INVESTIGATION CHARGES A FEE FOR CONDUCTING THE CRIMINAL HISTORY
CHECK, THE DEPARTMENT SHALL PAY THE COST OF THE CHARGE UP TO 40
CRIMINAL HISTORY CHECKS PER YEAR FOR A COVERED FACILITY THAT IS A
HOME FOR THE AGED WITH FEWER THAN 100 BEDS AND 50 CRIMINAL HISTORY
CHECKS PER YEAR FOR A HOME FOR THE AGED WITH 100 BEDS OR MORE. The
staffing agency or covered facility shall not seek reimbursement
for a charge imposed by the department of state police or the
federal bureau of investigation—FEDERAL BUREAU OF INVESTIGATION
from the individual who is the subject of the criminal history
check. A prospective employee or a prospective independent
contactor covered under this section may not be charged for the
cost of a 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. 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—FEDERAL BUREAU OF INVESTIGATION
determination to the department within 30 days after the request is
made. If the requesting staffing agency or covered facility is not
a state department or agency and if criminal history record
information is disclosed on the written report of the criminal
history check or the federal bureau of investigation—FEDERAL BUREAU
OF INVESTIGATION determination that resulted in a conviction, the
department shall notify the staffing agency or covered facility 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—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—FEDERAL BUREAU OF INVESTIGATION for conducting a
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 the information relied upon by the staffing
agency or covered facility in making its decision regarding his or
her employment eligibility based on the criminal history check. The
notice shall also include information regarding where to file and
describing the appellate procedures established under section
20173b.

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

(a) The covered facility requests the criminal history check
or criminal history record information 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) to (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) That he or she agrees that, if the information in the
criminal history check conducted under this section does not
confirm the individual's statements under subparagraphs (i) to (iii), his or her employment or clinical privileges will be terminated by the covered facility 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 that the conditions described in subparagraphs (i) to (iv) may result in the termination of his or her employment or clinical privileges and that those conditions are good cause for termination.

(c) Except as otherwise provided in this subdivision, the covered facility does not permit the individual to have regular direct access to or provide direct services to patients or residents in the covered facility without supervision until the criminal history check or criminal history record information is obtained and the individual is eligible for that employment or clinical privileges. If required under this subdivision, the covered facility shall provide on-site supervision of an individual in the covered facility on a conditional basis under this subsection by an individual who has undergone a criminal history check conducted in compliance with this section. A covered facility may permit an individual in the covered facility on a conditional basis under this subsection to have regular direct access to or provide direct services to patients or residents in the covered facility without supervision if all of the following conditions are met:

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

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

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

(6) The department shall develop and distribute a model form
for the statements required under subsection (5)(b) and (c). The
department shall make the model form available to covered
facilities 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 information under subsection (3) or report under subsection
(4) does not confirm the individual's statement under subsection
(5)(b)(i) to (iii), the covered facility 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) to (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 staffing agency or covered facility shall use criminal history record information obtained under subsection (3) or (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 staffing agency or covered facility or an employee of the staffing agency or covered facility shall not disclose criminal history record information obtained under subsection (3) or (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 (3) or (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. Except for a knowing or intentional release of false information, a staffing agency or covered facility has no liability in connection with a criminal history check conducted in compliance with this section or the release of criminal history record information under this subsection.
(10) Upon consent of an applicant as required in subsection (3) and upon request from a staffing agency or covered facility that has made a good faith offer of employment or an independent contract or clinical privileges to the applicant, the relevant licensing or regulatory department shall review the criminal history record information, if any, and notify the requesting staffing agency or covered facility of the information in the manner prescribed in subsection (4). Until the federal bureau of investigation implements an--DEPARTMENT OF STATE POLICE CAN PARTICIPATE WITH THE FEDERAL BUREAU OF INVESTIGATION'S automatic notification system similar to the system required of the state police under subsection (13) and federal regulations allow the federal criminal record to be used for subsequent authorized uses, as determined in an order issued by the department, a staffing agency or covered facility may rely on the criminal history record information provided by the relevant licensing or regulatory department under this subsection 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 not necessary if all of the following requirements are met:

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

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

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

(11) 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 staffing agency or covered facility immediately upon being arraigned for 1 or more of the criminal offenses listed in subsection (1)(a) to (g), upon being convicted of 1 or more of the criminal offenses listed in subsection (1)(a) to (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.

(12) In addition to sanctions set forth in section 20165, a licensee, owner, administrator, or operator of a staffing agency or covered facility 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.

(13) In collaboration with the department of state police, the
department of technology, management, and budget shall establish
and maintain an automated fingerprint identification system
database that would allow the department of state police to AND
THE FEDERAL BUREAU OF INVESTIGATION SHALL store and maintain RETAIN
all fingerprints submitted under this section and would provide for
an automatic notification if and when a subsequent criminal arrest
fingerprint card INFORMATION submitted into the system matches a
set of fingerprints previously submitted under this section. Upon
such notification, the department of state police shall immediately
notify the department and the department shall immediately contact
each respective staffing agency or covered facility 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.

(14) The department shall maintain an electronic web-based
system to assist staffing agencies and covered facilities required
to check relevant registries and conduct criminal history checks of
its employees, independent contractors, and individuals granted
privileges and to provide for an automated notice to those staffing
agencies and covered facilities for those individuals inputted in
the system who, since the initial criminal history check, have been
convicted of a disqualifying offense or have been the subject of a
substantiated finding of abuse, neglect, or misappropriation of
property. The department may charge a staffing agency a 1-time set-
up fee of up to $100.00 for access to the electronic web-based
system under this section.

(15) 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) "Convicted" means either of the following:

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

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

(c) "Covered facility" 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.

(d) "Criminal history check conducted in compliance with this
section" includes a criminal history check conducted under this
section, under section 134a of the mental health code, 1974 PA 258,
MCL 330.1134a, or under section 34b of the adult foster care
facility licensing act, 1979 PA 218, MCL 400.734b.
(e) "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.

(f) "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.

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

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

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

(j) "Staffing agency" means an entity that recruits candidates and provides temporary and permanent qualified staffing for covered facilities, including independent contractors.

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

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

(II) Directs or oversees 1 or more of the following:

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

(B) The tasks performed by the individual.

(C) The individual's work schedule.

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

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

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

SEC. 21302. (1) "CONTINUING CARE COMMUNITY" MEANS THAT TERM AS
DEFINED IN SECTION 3 OF THE CONTINUING CARE COMMUNITY DISCLOSURE
ACT, 2014 PA 448, MCL 554.903.

(2) "SUPERVISED PERSONAL CARE" MEANS THE DIRECT GUIDANCE OR
HANDS-ON ASSISTANCE WITH ACTIVITIES OF DAILY LIVING OFFERED BY A
FACILITY TO RESIDENTS OF THE FACILITY THAT INCLUDE 2 OR MORE OF THE
FOLLOWING SERVICES PROVIDED BY THE FACILITY TO ANY RESIDENT FOR 30
OR MORE CONSECUTIVE DAYS AS DOCUMENTED IN THE RESIDENT'S SERVICE
PLAN:

(A) DIRECT AND REGULAR INVOLVEMENT BY STAFF IN ASSISTING A
RESIDENT WITH THE ADMINISTRATION OF THE RESIDENT'S PRESCRIPTION
MEDICATIONS, INCLUDING DIRECT SUPERVISION OF THE RESIDENT TAKING
MEDICATION IN ACCORDANCE WITH THE INSTRUCTIONS OF THE RESIDENT'S
LICENSED HEALTH CARE PROFESSIONAL.

(B) HANDS-ON ASSISTANCE BY STAFF IN CARRYING OUT 2 OR MORE OF
THE FOLLOWING ACTIVITIES OF DAILY LIVING: EATING, TOILETING,
BATHING, GROOMING, DRESSING, TRANSFERRING, AND MOBILITY.

(C) DIRECT STAFF INVOLVEMENT IN A RESIDENT'S PERSONAL AND
SOCIAL ACTIVITIES OR THE USE OF DEVICES TO ENHANCE RESIDENT SAFETY
BY CONTROLLING RESIDENT EGRESS FROM THE FACILITY.

Sec. 21311. (1) A—EXCEPT AS PROVIDED IN SECTION 21311A, A home
for the aged shall be licensed under this article.

(2) "Home—EXCEPT AS PROVIDED IN SECTION 21311A, "Home for the
aged" or a similar term or abbreviation shall not be used to
describe or refer to a health facility or agency unless the health
facility or agency is licensed as a home for the aged by the
department under this article.

(3) Except as otherwise provided in this subsection, a home
for the aged shall not admit an individual under 60-55 years of
age. Upon the request of a home for the aged and subject to
subsection (4), the director shall waive the age limitation imposed
by this subsection if the individual, the individual's guardian or
other legal representative, if appointed, and the owner, operator,
and governing body of the home for the aged, upon consultation with
the individual's physician, agree on each of the following:

(a) The home for the aged is capable of meeting all of the
individual's medical, social, and other needs as determined in the
individual's plan of service.

(b) The individual will be compatible with the other residents of that home for the aged.

(c) The placement in that home for the aged is in the best interests of the individual.

(4) The owner, operator, and governing body of the home for the aged shall submit, with its request for a waiver, documentation to the director that supports each of the points of agreement necessary under subsection (3). Within 5 days after receipt of the information required under this subsection, the director shall determine if that documentation collectively substantiates each of the points of agreement necessary under subsection (3) and approve or deny the waiver. If denied, the director shall send a written notice of the denial and the reasons for denial to the requesting party.

SEC. 21311A. (1) BEGINNING ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION, AN EXEMPTION FROM LICENSING ALLOWED UNDER THIS SECTION SHALL BE GIVEN TO AN EXISTING FACILITY OR A FACILITY UNDER CONSTRUCTION AT WHICH BOARD IS OFFERED THROUGH A PERSON NOT RELATED TO THE PERSON THAT PROVIDES ROOM OR SUPERVISED PERSONAL CARE, OR BOTH, OR SUPERVISED PERSONAL CARE IS OFFERED THROUGH ANY PERSON WHETHER OR NOT THAT PERSON IS RELATED TO THE PERSON THAT PROVIDES ROOM OR BOARD, OR BOTH, IF THE SUPERVISED PERSONAL CARE ARRANGEMENT HAS BEEN IN EFFECT FOR AT LEAST 5 CONSECUTIVE YEARS BEFORE THE EXEMPTION IS REQUESTED AND RESIDENTS AT THE FACILITY HAVE THE OPTION TO SELECT ANY SUPERVISED PERSONAL CARE PROVIDER, IF THAT FACILITY MEETS THE REQUIREMENTS OF THIS
SECTION. AN ATTESTATION MUST BE PROVIDED BY THE OWNER OR MANAGING
COMPANY THAT CERTIFIES THAT THE PERSONS DESCRIBED IN THIS
SUBSECTION ARE NOT RELATED. THE APPLICANT MUST ACKNOWLEDGE THAT THE
PENALTY FOR SUBMITTING A FALSE OR INACCURATE ATTESTATION IS AN
ADMINISTRATIVE FINE OF $5,000.00. AN EXEMPTION GRANTED UNDER THIS
SUBSECTION CONTINUES TO EXIST FOR A SUCCESSOR OWNER, OPERATOR, OR
GOVERNING BODY PROVIDED THAT THE SUCCESSOR FILES THE ATTESTATION
REQUIRED UNDER THIS SUBSECTION. AN EXEMPTION SHALL NOT BE GRANTED
UNDER THIS SUBSECTION AFTER DECEMBER 31, 2019, EXCEPT TO A
SUCCESSOR OWNER, OPERATOR, OR GOVERNING BODY AS PROVIDED IN THIS
SUBSECTION.

(2) THE DEPARTMENT SHALL MAKE A DETERMINATION THAT A FACILITY
IS EXEMPT FROM LICENSURE AS A HOME FOR THE AGED UNDER THIS ARTICLE
IF THE OWNER, OPERATOR, OR GOVERNING BODY OF THE FACILITY SUBMITS
AN ATTESTATION TO THE DEPARTMENT THAT ASSURES EITHER OF THE
FOLLOWING:

(A) ALL OF THE FOLLOWING REQUIREMENTS ARE MET:

(i) THE OWNER, OPERATOR, OR GOVERNING BODY THAT PROVIDES ROOM
AND THE PERSON THAT PROVIDES SUPERVISED PERSONAL CARE ARE NOT
RELATED.

(ii) THE INDIVIDUAL HAS THE RIGHT TO CONTRACT FOR SUPERVISED
PERSONAL CARE FROM A PERSON OF HIS OR HER CHOICE.

(iii) THE ATTESTATION MUST BE PROVIDED BY THE OWNER OR
MANAGING COMPANY THAT CERTIFIES THAT THE PERSONS DESCRIBED IN
SUBPARAGRAPH (i) ARE NOT RELATED.

(iv) THE APPLICANT ACKNOWLEDGES THAT THE PENALTY FOR
SUBMITTING A FALSE OR INACCURATE ATTESTATION IS AN ADMINISTRATIVE
FINE OF $5,000.00.

(B) BOTH OF THE FOLLOWING REQUIREMENTS ARE MET:

(i) THE ENTITY THAT PROVIDES ROOM AND THE ENTITY THAT PROVIDES
SUPERVISED PERSONAL CARE ARE RELATED, AND THE FACILITY IS
REGISTERED AS A CONTINUING CARE COMMUNITY UNDER THE CONTINUING CARE
COMMUNITY DISCLOSURE ACT, 2014 PA 448, MCL 554.901 TO 554.993, AND
THAT INCLUDES A LICENSED NURSING HOME AS PART OF THE CONTINUING
CARE COMMUNITY.

(ii) THE APPLICANT ACKNOWLEDGES THAT THE PENALTY FOR
SUBMITTING A FALSE OR INACCURATE ATTESTATION IS AN ADMINISTRATIVE
FINE OF $5,000.00.

(3) A DENIAL OF AN APPLICATION FOR EXEMPTION, AN ISSUANCE OF A
FINE, OR A REVOCATION OF AN EXEMPTION IS SUBJECT TO A REVIEW BY THE
DEPARTMENT UPON THE APPLICANT PROVIDING FURTHER INFORMATION OR AN
APPEAL AS PROVIDED IN SECTION 1205, OR BOTH. THE DEPARTMENT SHALL
ACT ON AN EXEMPTION REQUESTED UNDER THIS SECTION AS SOON AS
PRACTICABLE BUT NO LATER THAN 60 DAYS AFTER RECEIPT OF THE REQUEST
FOR EXEMPTION.

(4) AN EXEMPTION GRANTED UNDER SUBSECTION (1) OR (2) MAY BE
REVOKED IF THE DEPARTMENT DETERMINES 1 OF THE FOLLOWING:

(A) THAT THE FALSE OR INACCURATE INFORMATION PROVIDED IN THE
ATTESTATION WAS MATERIAL TO GRANTING THE EXEMPTION.

(B) THE APPLICANT RECEIVING THE EXEMPTION IS FOUND TO BE
NEGLIGENT, WHICH NEGLIGENCE RESULTS IN SERIOUS PHYSICAL INJURY,
DEATH OF A RESIDENT, OR SERIOUS MENTAL ANGUISH, AND THERE CONTINUES
TO BE A RISK TO THE HEALTH AND SAFETY OF THE RESIDENTS AT THAT
FACILITY.
(C) THE APPLICANT RECEIVING THE EXEMPTION DOES NOT COOPERATE IN THE DEPARTMENT'S INVESTIGATION TO MAKE A DETERMINATION FOR SUBDIVISION (A) OR (B).

(5) AS USED IN THIS SECTION:
(A) "BOARD" MEANS FOOD SERVICE PROVIDED AT A FACILITY.
(B) "RELATED" MEANS ANY OF THE FOLLOWING PERSONAL RELATIONSHIPS BY MARRIAGE, BLOOD, OR ADOPTION: SPOUSE, CHILD, PARENT, BROTHER, SISTER, GRANDPARENT, GRANDCHILD, AUNT, UNCLE, STEPPARENT, STEPBROTHER, STEPSISTER, OR COUSIN. RELATED ALSO MEANS AN ENTITY OWNS OR IS OWNED BY ANY PERSON THAT HAS A DIRECT OR INDIRECT OWNERSHIP INTEREST IN ANY OTHER ENTITY THAT PROVIDES A COMPONENT OF OPERATIONS OR SERVICE UNDER SUBSECTION (1) (A) (i).
(C) "SERIOUS MENTAL ANGUISH" MEANS DAMAGE SUFFERED BY A RESIDENT THAT A PHYSICIAN, PHYSICIAN ASSISTANT, OR NURSE PRACTITIONER DETERMINES CAUSED OR COULD HAVE CAUSED EXTREME EMOTIONAL DISTRESS THAT RESULTED IN HOSPITALIZATION, PSYCHIATRIC TREATMENT, OR DEATH OF A RESIDENT.

(D) "SERIOUS PHYSICAL INJURY" MEANS DAMAGE SUFFERED BY A RESIDENT THAT A PHYSICIAN, PHYSICIAN ASSISTANT, OR NURSE PRACTITIONER DETERMINES CAUSED OR COULD HAVE CAUSED DEATH OF A RESIDENT, CAUSED THE IMPAIRMENT OF HIS OR HER BODILY FUNCTION, OR CAUSED THE PERMANENT DISFIGUREMENT OF A RESIDENT.

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