BACKGROUND CHECK PILOT PROGRAM

OPERATIONAL PROTOCOL GUIDE

State Agency: Grantee - Michigan Department of Community Health
Project ID Number: Grant No. – 11- P-93042/5- 01
Final – July 27, 2005
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>SECTION</th>
<th>TOPIC</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>PART A</td>
<td>OPERATIONAL PROTOCOL GUIDE INSTRUCTIONS</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>DEFINITIONS</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>OPERATIONAL PROTOCOL</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>NOTIFICATION OF SUBSTANTIAL CHANGE</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>PROJECT OFFICER</td>
<td>7</td>
</tr>
<tr>
<td>PART B</td>
<td>STATE AGENCY CONTACT</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>STATE AUTHORITY</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>BACKGROUND CHECK PROGRAM COMPONENTS</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>BACKGROUND CHECK PROCESS</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>FITNESS DETERMINATION</td>
<td>26</td>
</tr>
<tr>
<td></td>
<td>EMPLOYMENT/STAFFING AGENCIES</td>
<td>31</td>
</tr>
<tr>
<td></td>
<td>PROVISIONAL EMPLOYMENT</td>
<td>31</td>
</tr>
<tr>
<td></td>
<td>BACKGROUND CHECK ACCURACY</td>
<td>32</td>
</tr>
<tr>
<td></td>
<td>APPEALS</td>
<td>33</td>
</tr>
<tr>
<td></td>
<td>REHABILITATION REVIEW</td>
<td>34</td>
</tr>
<tr>
<td></td>
<td>BACKGROUND CHECK PROCESSFLOW</td>
<td>36</td>
</tr>
<tr>
<td></td>
<td>COMPLIANCE MONITORING &amp; FEEDBACK</td>
<td>38</td>
</tr>
<tr>
<td></td>
<td>EDUCATION &amp; TECHNICAL ASSISTANCE PLAN</td>
<td>39</td>
</tr>
<tr>
<td></td>
<td>MANAGEMENT</td>
<td>39</td>
</tr>
<tr>
<td></td>
<td>SYSTEM INFRASTRUCTURE</td>
<td>39</td>
</tr>
<tr>
<td></td>
<td>PROGRAM IMPLEMENTATION</td>
<td>40</td>
</tr>
<tr>
<td></td>
<td>CMS DATA REPORTING REQUIREMENTS</td>
<td>41</td>
</tr>
<tr>
<td></td>
<td>PILOT PHASE-DOWN PLAN</td>
<td>42</td>
</tr>
<tr>
<td></td>
<td>ATTACHMENTS</td>
<td>42</td>
</tr>
</tbody>
</table>
1. OPERATIONAL PROTOCOL GUIDE INSTRUCTIONS

1.1. Pilot Program Background
Section 307 of the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 (PL 108-173) established the framework for a program to evaluate national and state background checks on prospective employees with direct access to patients of long-term care facilities or providers. The program’s purpose is to identify efficient, effective, and economical procedures for conducting background checks. The pilot will be administered by the Centers for Medicare & Medicaid Services (CMS), in consultation with the Department of Justice. The pilot programs will operate from January 2005 through September 2007. Pilot states may phase in the implementation of their background check program, but all aspects of the program must be fully operational by March 31, 2006, to allow obtaining sufficient data for the evaluation.

1.2. Background Check Pilot Program Requirements
Pilot states have established their specific background check requirements; however, each state program must include, at a minimum, the following requirements as set forth in Section 307 of the MMA:

- Long-term care facilities and providers must conduct background checks for all direct patient access employees prior to the applicant’s employment. Long-term care facilities subject to these requirement include:
  - Skilled nursing facilities/nursing facilities
  - Long-term care hospitals/hospitals with swing beds
  - Intermediate care facilities for persons with mental retardation (ICFs/MR)
  - Home health agencies
  - Home–and- community- based service (HBCS) group homes over 8 beds
  - Personal care agencies – Medicaid State Plan
  - Additional provider types included in the state’s proposal

- As a condition of employment, the applicant must provide the following:
  - A written statement disclosing any disqualifying information
  - A written statement authorizing the facility or provider to request a national and state criminal history check
  - A set of 10 rolled fingerprints

- The background check must include a search of:
  - Any available registry (including state nurse aide registries) and databases that would likely contain disqualifying information about the applicant, and
  - State and national criminal records, through a 10 rolled fingerprint check, utilizing state criminal records and the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation (FBI).

- The background check procedure must permit the facility to terminate the check at any stage that disqualifying information regarding the applicant is obtained.

- The background check results must be reviewed to determine if the applicant has any relevant crimes or offenses.

- States must ensure facilities only use any the background check information for the purpose of determining suitability of employment.
• Long-term care facilities may not knowingly employ any direct patient access worker who as any disqualifying information.

• States must establish procedures to permit applicants to appeal or dispute the accuracy of the background check results.

• States must ensure that long-term care facilities, when denying employment to applicants and reasonably relying upon the results of the background check, are provided immunity from any action brought by the applicant due to the employment decision.

• States must establish a method to monitor compliance with the background check requirements.

• States must report the existence of any the conviction or a relevant crime to the Healthcare Integrity and Protection Data Bank (HIPDB) database regarding any employee subject to reporting requirements under section 1128E of the Social Security Act II (42 USC 1320a-7e).

1.3. Other Program Provisions
States may elect to include other background check provisions, such as:
• Allowing long-term care facilities/providers a period of provisional employment for direct patient access employees, pending receipt of the background check results. Supervision of the employee is required during this period, as determined by the state.

• Establishing procedures for conducting background checks on direct access patient applicants who are employed by employment agencies (including temporary employment or staffing agencies).

1.4. Evaluation
Separate funds have been ear-marked to conduct an independent evaluation of the background check pilot. The evaluation will:
• Analyze the effectiveness and costs associated with conducting state and national background checks for long-term care employees

• Compile “lessons learned” from the pilot states to guide further decisions

2. DEFINITIONS
Definitions used in the context of the CMS Background Check Pilot Program include the following:

2.1. Abuse Prevention Training Program
A program for direct patient access employees and their managers that addresses the issues that precipitate abusive behavior and provides preventive solutions for reducing incidents of abuse and neglect and for improving the quality of care for patients with long term illnesses or disabilities.

2.2. Any Available Registries
Any state-based registries or databases, in addition to the state’s nurse aide registry, that identify those who have been approved by state requirements to provide care to residents or patients in long-term care facilities or by providers of long-term care
services. These registries may include, but are not limited to, those which list physicians, nurses, psychologists, and other professionals who are considered direct access employees. In addition, to the extent required by CMS, other national databases that should be checked include the Medicare Exclusion Database (MED), Fraud Investigation Database (FID), Healthcare Integrity and Protection Data Bank (HIPDB), or the National Practitioner Data Bank (NPDB), for those categories of employees that the database or registry focuses (e.g., physicians may include a check of the NPDB, but that database is unlikely to contain disqualifying information for a nurse aide).

2.3. Background Check
The process by which the state-appointed agency, the provider, or the employer conducts a legislatively-approved investigation (with written approval of a direct patient access employee’s personally provided information) at the time of application for employment. For the purpose of this program, a background check includes the checking of any available registries (e.g., nurse aide registry, see 2.2), and a search of state and national criminal history records through a 10-rolled fingerprint check.

2.4. Centers for Medicare and Medicaid Services (CMS)
The federal agency that administers the Medicare program and works in partnership with the states to administer Medicaid, the State Children’s Health Insurance Program (SCHIP), and the health insurance portability standards. CMS is responsible for the administrative standards of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and quality standards in health care facilities through its survey and certification activity.

2.5. Conviction for a Relevant Crime
Any federal or state criminal conviction for any offense described in section 1128(a) of the Social Security Act (42 U.S.C. 1320a – 7) and such other types of offenses a participating state may specify for purposes of conducting the pilot program in that state.

2.6. Direct Patient Access Employee
Any individual (other than a volunteer) that has access to a patient or resident of a long-term care facility or provider through employment or through a contract with such facility or provider, as determined by the state.

2.7. Disqualifying Information
A conviction for a relevant crime or a finding of patient or resident abuse.

2.8. Employment Agency
An organization that provides temporary, part-time, or permanent staff to a requesting facility or provider organization.

2.9. Finding of Patient or Resident Abuse
The term “finding of patient or resident abuse” means any substantiated finding by a state agency under section 1819(g)(1)(C) or 1919(g)(1)(C) of the Social Security Act (42 U.S.C. 1395i– 3(g)(1)(C), 1396r(g)(1)(C)) or a federal agency that a direct patient access employee has committed (A) an act of patient or resident abuse or neglect or a misappropriation of patient or resident property; or (B) such other types of acts as a participating state may specify for purposes of conducting the pilot program in such state.

2.10. Fitness Determination
A decision made by either the state appointed agency, the provider, or the employer to either offer a position of employment or to deny a position of employment, based on the information obtained through the background check search.

2.11. Livescan and Cardscan
Automated devices for generating and transmitting digitized fingerprint images. Livescan devices capture fingerprint images directly from subjects’ fingers, which are rolled onto glass scanning plates. Cardscan devices scan and digitize standard inked fingerprint cards and can transmit electronic images with related textual data to remote sites for printout or direct use.
2.12. Long Term Care Facility or Provider
Participating states must require, at a minimum, certain long term care facilities or providers, which receive payment for services under title XVIII or XIX of the Social Security Act, in their background check program, including, skilled nursing facilities, nursing facilities, home health agencies, long-term care hospitals, providers of personal care services, residential care providers that arranges for, or directly provides, long-term care services, intermediate care facilities for the mentally retarded. States may choose to expand this list of providers.

2.13. National Criminal History Background Check
The criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification, through its Integrated Automated Fingerprint Identification System (IAFIS) and the utilization of state criminal records or other methods of positive identification.

2.14. Nurse Aide Registry
A federal mandate requiring states to establish and maintain a registry which contains information on individuals who have successfully completed a nurse aide training and competency evaluation program in accordance with federal requirements and who have been found competent to perform as a nurse aide in long term care. States must also permanently maintain information on the registry regarding nurse aides who have a substantiated governmental finding of resident abuse or neglect or misappropriation of resident property.

2.15. Participating State
A state issued an award agreement by CMS to participate in the Background Check Pilot Program.

2.16. Rehabilitation
The reestablishment of an individual’s character following conviction of a crime as defined by state statute or regulation. Rehabilitation may be demonstrated by the passage of time and by examining an individual’s activities and lifestyle.

2.17. Set of Fingerprints
A rolled impression of a prospective direct access employee’s 10 fingertips.

3. OPERATIONAL PROTOCOL
States participating in the Background Check Pilot Program, having agreed to accept the Terms and Conditions of the pilot grant, must submit an Operational Protocol. The Operational Protocol must:
• Describe in detail the state policies and procedures to be followed during the pilot period
• Detail the responsibilities of any parties included in the program, including:
  o The providers included in the program
  o Any state government personnel
  o Additional third parties (e.g., contractors) involved in the program

As part of the application process, state agencies submitted a Project Narrative (limited to 40 pages), which provided a concise description of their proposed pilot program. While similar to the Project Narrative, the Operational Protocol must fully describe the state’s detailed plan to operationalize their proposal.
Part B of this Operational Protocol Guide provides a format to ensure thoroughness and consistency for each state’s Operational Protocol. Please detail your program operations in the space provided, using this guide as a template. Lengthy, narrative explanations are not recommended. As much as possible, please utilize a bullet or numbered format, flow charts and visual diagrams to describe your program. Feel free to add or enhance your Operational Guide, but every topic must be addressed. If a specific topic does not apply to your program, indicate that fact.

Submit the first draft of your completed Operational Protocol as an attachment, via e-mail, to your assigned CMS Project Officer by Friday, April 29, 2005. Your CMS Background Check Pilot Program Project Officer will review your draft protocol and provide further direction if necessary. The final Operational Protocol must be reviewed and approved by CMS no later than the end of the pilot’s first budget quarter (June 30, 2005).

4. NOTIFICATION OF SUBSTANTIAL CHANGE

4.1. Report Substantial Changes
Any substantial change to your state’s operations, as detailed in your state’s approved CMS Background Check Pilot Program Operations Protocol, must be reported in writing to your CMS Background Check Pilot Project Officer. You must apply for approval by submitting the proposed change in writing to your CMS Project Officer. The change may not be implemented until CMS approves the program change. A CMS Background Check Pilot Program Substantial Change Notification tool has been developed for your convenience.

4.2. Substantial Change Examples
Substantial changes include any significant change in the key components of your Background Check Pilot Program operations, including, but not limited to, the following:
• Change in state legislation enabling or prohibiting any requirement under Section 307 of the MMA
• Change in the registry and database search process
• Change in the state criminal record search process
• Change in the FBI IAFIS record search process
• Change in the fitness determination process
• Change in the background check costs and fee(s)
• Change in the disqualifying information
• Change in the appeals process
• Change in the rehabilitation process
• Change in the provision of facility immunity
• Change in the state monitoring and enforcement of the background check requirements
• Change in the data collection for the CMS evaluation
• Change in the name, address, telephone, fax or e-mail address for your program’s CMS primary and secondary contact person

5. PROJECT OFFICER
If you have any questions regarding the Operational Protocol Guide or the scope and implementation of your program, contact your CMS Background Check Pilot Project Officer (see list below). Your project officer will be scheduling monthly conference calls to discuss and assist with the implementation of your state’s program.
<table>
<thead>
<tr>
<th>Project Officer</th>
<th>Phone Number</th>
<th>E-mail Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thomas Kress</td>
<td>410-786-8533</td>
<td><a href="mailto:thomas.kress@cms.hhs.gov">thomas.kress@cms.hhs.gov</a>.</td>
</tr>
<tr>
<td>Susan Larsen</td>
<td>410-786-2640</td>
<td><a href="mailto:susan.larsen@cms.hhs.gov">susan.larsen@cms.hhs.gov</a></td>
</tr>
<tr>
<td>Cindy Melanson</td>
<td>410-786-0310</td>
<td><a href="mailto:cindy.melanson@cms.hhs.gov">cindy.melanson@cms.hhs.gov</a></td>
</tr>
<tr>
<td>Joann Perry</td>
<td>410-786-3336</td>
<td><a href="mailto:joann.perry@cms.hhs.gov">joann.perry@cms.hhs.gov</a></td>
</tr>
<tr>
<td>Laura Weber</td>
<td>410-786-0227</td>
<td><a href="mailto:laura.weber@cms.hhs.gov">laura.weber@cms.hhs.gov</a></td>
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PART B – OPERATIONAL PROTOCOL

1. STATE AGENCY CONTACT

   Provide the name, address, telephone number, fax number and e-mail address of your state’s CMS Background Check Pilot Program primary and secondary contacts.

<table>
<thead>
<tr>
<th>Primary Contact</th>
<th>Secondary Contact</th>
</tr>
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<tbody>
<tr>
<td>Name: Jan Christensen</td>
<td>Name: Gloria Lanum</td>
</tr>
<tr>
<td>Address: Health Policy, Regulation and Professions Administration Michigan Dept of Community Health Lewis Cass Building, 6th Floor 320 S. Walnut Street Lansing, MI 48913</td>
<td>Address: Health Policy, Regulation and Professions Administration Michigan Dept of Community Health Lewis Cass Building, 6th Floor 320 S. Walnut Street Lansing, MI 48913</td>
</tr>
<tr>
<td>Telephone: 517-241-1197</td>
<td>Telephone: 517-241-2066</td>
</tr>
<tr>
<td>Fax: 517-241-1200</td>
<td>Fax: 517-241-1200</td>
</tr>
<tr>
<td>E-mail: <a href="mailto:ChristensenJ@michigan.gov">ChristensenJ@michigan.gov</a></td>
<td>E-mail: <a href="mailto:LanumG@michigan.gov">LanumG@michigan.gov</a></td>
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2. STATE AUTHORITY

   2.1. Current State Authority

   Describe your state’s current authority to meet all aspects of the CMS Background Check Pilot Program requirements. Provide state’s statutory or regulatory language and citations in the appropriate column to indicate your state authority to conform with each requirement of Section 307 of the MMA.
<table>
<thead>
<tr>
<th>Section 307, MMA</th>
<th>CMS Minimum Requirements</th>
<th>State Authority (Legislative, Regulatory, Other)</th>
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<tbody>
<tr>
<td>307(b)(1)</td>
<td>REQUIREMENTS. IN GENERAL</td>
<td>MCL 333.20173 (3) An individual who applies</td>
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<td>Under the pilot program, a long-term</td>
<td>for employment either as an employee or as</td>
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<td>care facility or provider in a</td>
<td>an independent contractor or for clinical</td>
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<td>participating State, prior to employing</td>
<td>privileges with a health facility or agency that</td>
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<td>a direct patient access employee that</td>
<td>is a nursing home, county medical care</td>
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<td>is first hired on or after the</td>
<td>facility, or home for the aged and has received</td>
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<td>commencement date of the pilot</td>
<td>a good faith offer of employment, an</td>
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<td>program in the State, shall conduct</td>
<td>independent contract, or clinical privileges</td>
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<td>a background check on the employee in</td>
<td>from the health facility or agency shall give</td>
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<td>accordance with such procedures as</td>
<td>written consent at the time of application for</td>
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<td>the participating State shall establish.</td>
<td>the department of state police.</td>
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<td>PROCEDURES. IN GENERAL.</td>
<td>(This currently includes only those who provide direct services.)</td>
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<td>307(b)(2)(A)(1)(i)</td>
<td>The procedures established by a</td>
<td>MCL 400.734a(3) An individual who applies</td>
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<td>participating State under paragraph</td>
<td>for employment either as an employee or as</td>
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<td>should be designed to give a</td>
<td>an independent contractor with an adult foster</td>
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<td>prospective direct access patient</td>
<td>care facility and has received a good faith</td>
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<td>employee notice that the long-term</td>
<td>offer of employment or independent contract</td>
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<td>care facility or provider is required to</td>
<td>from the adult foster care facility shall give</td>
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<td>perform background checks with</td>
<td>written consent at the time of application for</td>
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<td>respect to new employees.</td>
<td>the department of state police to conduct a</td>
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<td>criminal history check under this section,</td>
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<td>along with identification acceptable to the</td>
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<td>department of state police.</td>
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<tr>
<td></td>
<td></td>
<td>(This currently includes only those who provide direct services.)</td>
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</table>

MCL 333.20173 (3) An individual who applies for employment either as an employee or as an independent contractor or for clinical privileges with a health facility or agency that is a nursing home, county medical care facility, or home for the aged and has received a good faith offer of employment, an independent contract, or clinical privileges from the health facility or agency shall give written consent at the time of application for the department of state police to conduct a criminal history check under subsection (4) or (5), or both, along with identification acceptable to the department of state police.

MCL 400.734a(3) An individual who applies for employment either as an employee or as an independent contractor with an adult foster care facility and has received a good faith offer of employment or independent contract from the adult foster care facility 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.
<table>
<thead>
<tr>
<th>Section 307, MMA</th>
<th>CMS Minimum Requirements</th>
<th>State Authority (Legislative, Regulatory, Other)</th>
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</thead>
</table>
| 307(b)(2)(A)(1)(ii) | Require, as a condition of employment, that the employee | MCL 333.20173 (6) If a health facility or agency that is a nursing home, county medical care facility, or home for the aged determines it necessary to employ or grant clinical privileges to an applicant before receiving the results of the applicant's criminal history check under subsection (4) or (5), or both, the health facility or agency may conditionally employ or grant conditional clinical privileges to the individual if all of the following apply: (a) The health facility or agency requests the criminal history check under subsection (4) or (5), or both, 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) and (b) within the applicable time period prescribed by subsection (1)(a) and (b). (ii) The individual agrees that, if the information in the criminal history check conducted under subsection (4) or (5), or both, does not confirm the individual's statement under subparagraph (i), his or her employment or clinical privileges will be terminated by the health facility or agency as required under subsection (1) unless and until the individual can prove that the information is incorrect. The health facility or agency shall provide a copy of the results of the criminal history check conducted under subsection (4) or (5), or both, to the applicant upon request. (iii) That he or she understands the conditions described in subparagraphs (i) and (ii) that result in the termination of his or her employment or clinical privileges and that those conditions are good cause for termination. MCL 400.734a(7) If an adult foster care facility determines it necessary to employ or independently contract with an individual before receiving the results of the individual's criminal history check required under this section, the adult foster care facility may conditionally employ the individual if both of the following apply: (a) The adult foster care facility requests the criminal history check required under this section, upon conditionally employing the individual. (b) The individual signs a written statement indicating all of the following:
<table>
<thead>
<tr>
<th>Section 307, MMA</th>
<th>CMS Minimum Requirements</th>
<th>State Authority (Legislative, Regulatory, Other)</th>
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</thead>
</table>
| 307(b)(2)(A)(1)(ii)(I) | Provide a written statement disclosing any disqualifying information; | **MCL 333.20173 (6) (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) and (b) within the applicable time period prescribed by subsection (1)(a) and (b).  
**MCL 400.734a(7)(b)** The individual signs a written statement indicating 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) and (b) within the applicable time period prescribed by subsection (1)(a) and (b). |
| 307(b)(2)(A)(1)(ii)(II) | Provide a statement signed by the employee authorizing the facility to request national and State criminal history background checks; | **MCL 333.20173 (3)** An individual who applies for employment either as an employee or as an independent contractor or for clinical privileges with a health facility or agency that is a nursing home, county medical care facility, or home for the aged and has received a good faith offer of employment, an independent contract, or clinical privileges from the health facility or agency shall give written consent at the time of application for the department of state police to conduct a criminal history check under subsection (4) or (5), or both, along with identification acceptable to the department of state police.  
**MCL 400.734a(3)** An individual who applies for employment either as an employee or as an independent contractor with an adult foster care facility and has received a good faith offer of employment or independent contract from the adult foster care facility 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. |
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<th>Section 307, MMA</th>
<th>CMS Minimum Requirements</th>
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</thead>
<tbody>
<tr>
<td>307(b)(2)(A)(1)(i)(ii) (III)</td>
<td>Provide the facility with a rolled set of the employee's fingerprints; and MCL 333.20173 (4) and shall make a request to the department of state police 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. An applicant described in this subsection shall provide the department of state police with 2 sets of fingerprints. The department of state police shall complete the criminal history check under subsection. MCL 400.734a(5) Upon receipt of the written consent and identification required under subsection (3), if the individual has applied for employment wither as an employee or as an independent contractor with an adult foster care facility license for more than 6 persons and has resided in this state for less than 3 years preceding the good faith offer of employment or independent contract the adult foster care facility that has made a good faith offer of employment or independent contract shall comply with subsection (4) and shall make a request to the department of state police to forward the individual’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 a national criminal history pertaining to the individual. An individual described in this subsection shall provide the department of state police with 2 sets of fingerprints.</td>
<td>None</td>
</tr>
<tr>
<td>307(b)(2)(A)(1)(i)(ii) (IV)</td>
<td>Provide any other identification information the participating State may require;</td>
<td>None</td>
</tr>
<tr>
<td>Section 307, MMA</td>
<td>CMS Minimum Requirements</td>
<td>State Authority (Legislative, Regulatory, Other)</td>
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<tr>
<td>307(b)(2)(A)(1)(iii)</td>
<td>Require the facility or provider to check any available registries that would be likely to contain disqualifying information about a prospective employee of a long-term care facility or provider;</td>
<td>The requirements include review of the facility policies for screening of potential hires, referring the surveyor to Appendix PP State Operations Manual at 483.13(c). The wording of that section of the Federal Regulations states: &quot;1. Screening (SOM 483.13(c)(1)(ii)(A)&amp;(B): Have procedures to: Screen potential employees for a history of abuse, neglect or mistreating residents as defined by the applicable requirements at 483.13(c)(1)(ii)(A) and (B). This includes attempting to obtain information from previous employers and/or current employers, and checking with the appropriate licensing boards and registries.&quot;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>None for Public Act 218 (re: Adult Foster Care Homes &amp; Homes for the Aged)</td>
</tr>
<tr>
<td>Section 307, MMA</td>
<td>CMS Minimum Requirements</td>
<td>State Authority (Legislative, Regulatory, Other)</td>
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<tr>
<td>307(b)(2)(A)(1)(iv)</td>
<td>Permit the facility or provider to obtain State and national criminal history background checks on the prospective employee through a 10-fingerprint check that utilizes State criminal records and the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation.</td>
<td>MCL 333.20173 (5) Upon receipt of the written consent and identification required under subsection (3), if an applicant has resided in this state for less than 3 years preceding the good faith offer of employment, an independent contract, or clinical privileges, a health facility or agency that is a nursing home, county medical care facility, or home for the aged that has made a good faith offer described in this subsection to the applicant shall comply with subsection (4) and shall make a request to the department of state police 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. An applicant described in this subsection shall provide the department of state police with 2 sets of fingerprints. The department of state police shall complete the criminal history check under subsection (4) and, except as otherwise provided in this subsection, provide the results of its determination under subsection (4) to the health facility or agency and the results of the federal bureau of investigation determination to the department of consumer and industry services within 30 days after the request is made. If the requesting health facility or agency is not a state department or agency and if a crime is disclosed on the federal bureau of investigation determination, the department shall notify the health facility or agency in writing of the type of crime disclosed on the federal bureau of investigation determination without disclosing the details of the crime. Any charges for fingerprinting or a federal bureau of investigation determination under this subsection shall be paid in the manner required under subsection (4).</td>
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<tr>
<td></td>
<td></td>
<td>MCL 400.734a(5) Upon receipt of the written consent and identification required under subsection (3), if the individual has applied for employment whether as an employee or as an independent contractor with an adult foster care facility license for more than 6 persons and has resided in this state for less than 3 years preceding the good faith offer of employment or independent contract the adult foster care facility that has made a good faith offer of employment or independent contract shall comply with subsection (4) and shall make a request to the department of state police to forward the individual's fingerprints to the federal bureau of investigation. The department of state police shall request the</td>
</tr>
<tr>
<td>Section 307, MMA</td>
<td>CMS Minimum Requirements</td>
<td>State Authority (Legislative, Regulatory, Other)</td>
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</tr>
<tr>
<td>307(b)(2)(B)(1)</td>
<td>ELIMINATION OF UNNECESSARY CHECKS. The procedures established by a participating State under paragraph (1) shall permit a long-term care facility or provider to terminate the background check at any stage at which the facility or provider obtains disqualifying information regarding a prospective direct patient access employee.</td>
<td>None</td>
</tr>
<tr>
<td>Section 307, MMA</td>
<td>CMS Minimum Requirements</td>
<td>State Authority (Legislative, Regulatory, Other)</td>
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<tr>
<td>307(b)(3)(A)</td>
<td>PROHIBITION ON HIRING OF ABUSIVE WORKERS, IN GENERAL. A long-term care facility or provider may not knowingly employ any direct patient access employee who has any disqualifying information.</td>
<td>MCL 333.20173 (1) Except as otherwise provided in subsection (2), a health facility or agency that is a nursing home, county medical care facility, or home for the aged shall not employ, independently contract with, or grant clinical privileges to an individual who regularly provides direct services to patients or residents in the health facility or agency after the effective date of the amendatory act that added this section if the individual has been convicted of 1 or more of the following: (a) A felony or an attempt or conspiracy to commit a felony within the 15 years immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract. (b) A misdemeanor involving abuse, neglect, assault, battery, or criminal sexual conduct or involving fraud or theft against a vulnerable adult as that term is defined in section 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m, or a state or federal crime that is substantially similar to a misdemeanor 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. MCL 400.734a(1) In addition to the restrictions prescribed in sections 13, 22, and 31, and except as otherwise provided in subsection (2), and adult foster care facility shall not employ or independently contract with an individual who regularly provides direct services to residents of the adult foster care facility after the effective date of the amendatory act that added this section if the individual has been convicted of 1 or more of the following: (a) A felony or an attempt or conspiracy to commit a felony within the 15 years immediately preceding the date of application for employment or the date of the execution of the independent contract. (b) A misdemeanor involving abuse, neglect, assault, battery, or criminal sexual conduct or involving fraud or theft against a vulnerable adult as that term is defined in section 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m, or a state or federal crime that is substantially similar to a misdemeanor described in this subdivision within the 10 years immediately preceding the date of application for employment or the date of the execution of the contract.</td>
</tr>
<tr>
<td>Section 307, MMA</td>
<td>CMS Minimum Requirements</td>
<td>State Authority (Legislative, Regulatory, Other)</td>
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<tr>
<td>307(b)(4)(A)</td>
<td>USE OF INFORMATION. A participating State shall ensure that a long-term care facility or provider that obtains information about a direct patient access employee pursuant to a background check uses such information only for the purpose of determining the suitability of the employee for employment.</td>
<td>MCL 333.20173 (10) A health facility or agency that is a nursing home, county medical care facility, or home for the aged shall use criminal history record information obtained under subsection (4), (5), or (6) 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 (6) and (8). A health facility or agency or an employee of the health facility or agency shall not disclose criminal history record information obtained under subsection (4) or (5) to a person who is not directly involved in evaluating the applicant's qualifications for employment, an independent contract, or clinical privileges. MCL 400.734a(11) An adult foster care facility shall use criminal history record information obtained under subsection (4), (5), or (6) only for the purpose of evaluation an individual's qualifications for employment in the position or which he or she has applied and for the purposes of subsections (7) and (9). An adult foster care facility or an employee of the adult foster care facility shall not disclose criminal history record information obtained under this section to a person who is not directly involved in evaluating the individual's qualifications for employment or independent contract.</td>
</tr>
<tr>
<td>307(b)(4)(B)</td>
<td>IMMUNITY FROM LIABILITY. A participating State shall ensure that a long-term care facility or provider that, in denying employment for an individual selected for hire as a direct patient access employee (including during any period of provisional employment), reasonably relies upon information obtained through a background check of the individual, shall not be liable in any action brought by the individual based on the employment determination resulting from the information.</td>
<td>MCL 333.20173 (10) Except for a knowing or intentional release of false information, a health facility or agency has no liability in connection with a background check conducted under this section or the release of criminal history record information under this subsection. MCL 400.734a (11) Except for a knowing or intentional release of false information, an adult foster care facility has no liability in connection with a background check conducted under this section or the release of criminal history record information under this subsection.</td>
</tr>
<tr>
<td>307(c)(1)</td>
<td>REQUIREMENTS FOR STATES, IN GENERAL. An agreement entered into under paragraph (1) shall require that a participating State -</td>
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<tr>
<td>307(c)(1)(A)</td>
<td>Be responsible for monitoring compliance with the requirements of the pilot program;</td>
<td>The State of Michigan has entered into an agreement with CMS to be responsible.</td>
</tr>
<tr>
<td>Section 307, MMA</td>
<td>CMS Minimum Requirements</td>
<td>State Authority (Legislative, Regulatory, Other)</td>
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<tr>
<td>307(c)(1)(B)</td>
<td>Have procedures by which a provisional employee or an employee may appeal or dispute the accuracy of the information obtained in a background check performed under the pilot program;</td>
<td>Refer to Public Health Act 368 (1978) and Act 218 (1979). The appeals process will allow an applicant to appeal on this basis. (See Attachment 1)</td>
</tr>
<tr>
<td>307(c)(1)(C)</td>
<td>Agree to</td>
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<tr>
<td>307(c)(1)(C)(i)</td>
<td>Review the results of any State or national criminal history background checks conducted regarding a prospective direct patient access employee to determine whether the employee has any conviction for a relevant crime;</td>
<td>MCL 333.20173 (4) to the health facility or agency and the results of the federal bureau of investigation determination to the department of consumer and industry services within 30 days after the request is made. If the requesting health facility or agency is not a state department or agency and if a crime is disclosed on the federal bureau of investigation determination, the department shall notify the health facility or agency in writing of the type of crime disclosed on the federal bureau of investigation determination without disclosing the details of the crime. Any charges for fingerprinting or a federal bureau of investigation determination under this subsection shall be paid in the manner required under subsection (4). MCL 400.734a(5) If the requesting adult foster care facility is not a state department or agency and if a crime is disclosed on the federal bureau of investigation determination, the department shall notify the adult foster care facility in writing of the type of crime disclosed on the federal bureau of investigation determination without disclosing the details of the crime.</td>
</tr>
<tr>
<td>Section 307, MMA</td>
<td>CMS Minimum Requirements</td>
<td>State Authority (Legislative, Regulatory, Other)</td>
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<tr>
<td>307(c)(1)(C)(ii)</td>
<td>Immediately report to the entity that requested the criminal history background checks the results of such review; and</td>
<td><strong>MCL 333.20173</strong> (4) to the health facility or agency and the results of the federal bureau of investigation determination to the department of consumer and industry services within 30 days after the request is made. If the requesting health facility or agency is not a state department or agency and if a crime is disclosed on the federal bureau of investigation determination, the department shall notify the health facility or agency in writing of the type of crime disclosed on the federal bureau of investigation determination without disclosing the details of the crime. Any charges for fingerprinting or a federal bureau of investigation determination under this subsection shall be paid in the manner required under subsection (4).</td>
</tr>
<tr>
<td><strong>MCL 400.734a(5)</strong></td>
<td>to the adult foster care facility and the results of the federal bureau of investigation determination to the department of consumer and industry services within 30 days after the request is made. If the requesting adult foster care facility is not a state department or agency and if a crime is disclosed on the federal bureau of investigation determination, the department shall notify the adult foster care facility in writing of the type of crime disclosed on the federal bureau of investigation determination without disclosing the details of the crime.</td>
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<tr>
<td>307(c)(1)(C)(iii)</td>
<td>In the case of an employee with a conviction for a relevant crime that is subject to reporting under section 1128E of the Social Security Act 11 (42 U.S.C. 1320a–7e), report the existence of such conviction to the database established under that section.</td>
<td>The Medicaid Program Investigation Section is responsible for reporting these convictions to the Healthcare Integrity and Protection Data Bank (HIPDB).</td>
</tr>
</tbody>
</table>
### Section 307, MMA

<table>
<thead>
<tr>
<th>CMS Minimum Requirements</th>
<th>State Authority (Legislative, Regulatory, Other)</th>
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<tbody>
<tr>
<td><strong>307(g)(5)(A)(i-viii)</strong></td>
<td><strong>LONG TERM CARE PROVIDER. IN GENERAL.</strong> The term “long-term care facility or provider” means the following facilities or providers which receive payment for services under title XVIII or XIX of the Social Security Act: A skilled nursing facility (as defined in section 1819(a) of the Social Security Act) (42 U.S.C. 1395i–3(a)); A nursing facility (as defined in section 1919(a) in such Act) (42 U.S.C. 1396(a)); A provider of hospice care (as defined in section 1861(dd)(1) of such Act) (42 U.S.C. 1395x(dd)(1)); A long-term care hospital (as described in section 1886(d)(1)(B)(iv) of such Act) (42 U.S.C. 1395ww(d)(1)(B)(iv)); A provider of personal care services; A residential care provider that arranges for, or directly provides, long-term care services; An intermediate care facility for the mentally retarded (as defined in section 1905(d) of such Act) 42 U.S.C. 1396d(d).**</td>
</tr>
<tr>
<td>Section 307, MMA</td>
<td>CMS Minimum Requirements</td>
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</tbody>
</table>
| 307(b)(3)(B)(i)  | PROVISIONAL EMPLOYMENT. IN GENERAL. Under the pilot program, a participating State may permit a long-term care facility or provider to provide for a provisional period of employment for a direct patient access employee pending completion of a background check, subject to such supervision during the employee’s provisional period of employment as the participating State determines appropriate. | **MCL 333.20173** (6) If a health facility or agency that is a nursing home, county medical care facility, or home for the aged determines it necessary to employ or grant clinical privileges to an applicant before receiving the results of the applicant’s criminal history check under subsection (4) or (5), or both, the health facility or agency may conditionally employ or grant conditional clinical privileges to the individual if all of the following apply:  
(a) The health facility or agency requests the criminal history check under subsection (4) or (5), or both, 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) and (b) within the applicable time period prescribed by subsection (1)(a) and (b).  
(ii) The individual agrees that, if the information in the criminal history check conducted under subsection (4) or (5), or both, does not confirm the individual’s statement under subparagraph (i), his or her employment or clinical privileges will be terminated by the health facility or agency as required under subsection (1) unless and until the individual can prove that the information is incorrect. The health facility or agency shall provide a copy of the results of the criminal history check conducted under subsection (4) or (5), or both, to the applicant upon request.  
(iii) That he or she understands the conditions described in subparagraphs (i) and (ii) that result in the termination of his or her employment or clinical privileges and that those conditions are good cause for termination.  
**MCL 400.734a(7)** If an adult foster care facility determines it necessary to employ or independently contract with an individual before receiving the results of the individual’s criminal history check required under this section, the adult foster care facility may conditionally employ the individual if both of the following apply:  
(a) The adult foster care facility requests the criminal history check required under this section, upon conditionally employing the individual.  
(b) The individual signs a written statement indicating all of the following:  
(i) That he or she has not been convicted of 1
### Section 307, MMA

<table>
<thead>
<tr>
<th>CMS Minimum Requirements</th>
<th>State Authority (Legislative, Regulatory, Other)</th>
</tr>
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<tbody>
<tr>
<td>307(b)(3)(B)(ii)</td>
<td>SPECIAL CONSIDERATION FOR CERTAIN FACILITIES AND PROVIDERS. In determining what constitutes appropriate supervision of a provisional employee, a participating State shall take into account cost or other burdens that would be imposed on small rural long-term care facilities or providers, as well as the nature of care delivered by such facilities or providers that are home health agencies or providers of hospice care.</td>
</tr>
<tr>
<td>307(b)(5)</td>
<td>AGREEMENTS WITH EMPLOYMENT AGENCIES. A participating State may establish procedures for facilitating the conduct of background checks on prospective direct patient access employees that are hired by a long-term care facility or provider through an employment agency (including a temporary employment agency).</td>
</tr>
<tr>
<td>307(b)(6)</td>
<td>PENALTIES. A participating State may impose such penalties as the State determines appropriate to enforce the requirements of the pilot program conducted in that State.</td>
</tr>
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</table>

### 2.2. Additional State Authority Needed

Describe any additional authority (e.g., law or regulation) that is needed by your state to fully implement the CMS Background Check Pilot requirements.

**Michigan** will need additional legislative authority to:

Expand background checks to Long Term Care Hospitals, ICF/MRs, Psychiatric Hospitals, Hospices, Home Health Agencies, Personal Care Agencies and Individual Personal Care Providers. Although Michigan has no HCBS Group Living, HCBS Group Homes or Personal Care Agencies under the State Medicaid Plan, legislative authority could also be sought for those types of facilities since Michigan is currently engaged in a Governor’s Long Term Care Reform effort that may recommend the creation of these types of long-term care settings.

Create an “Employment Eligibility Appeal Board” which would be empowered on appeal to approve individual exceptions for individuals whose demonstrated experience and rehabilitation warrant reconsideration.

Establish a background checks funding mechanism that will offset background check costs for applicants. This mechanism could take several forms.

Require FBI fingerprint checks for all background checks and

Preclude federally identified, prohibited offenses and substantiated findings of abuse.

Michigan will also seek health professions criminal background checks for initial licensing.

(See Attachment 1)
2.3. State Authority Plan
Describe your state’s step-by-step plan to obtain additional state authority, including:
• The status of the draft language
• When legislation will be introduced
• Who will introduce legislation
• Anticipated time table for legislation passage
• Potential barriers to passing legislation
• Other important issues

Note: CMS Background Check Pilot Program requirements may be phased in, but all
components of the program must be in place no later than March 31, 2006.

1. Language has been drafted and approved by the affected interest groups and the
department. The Governor’s Policy and Legislative departments have reviewed and signed
onto the Legislation.
2. Legislation should be introduced in the next 30 days.
3. Bi-partisan sponsorship has been obtained for the legislation.
4. We are pushing to have the bills in front of a legislative committee by September, and out
of one branch of the legislature by October. It should be passed out of the second branch
of the legislature by January. That will give time for conference committee if there are
amendments in the second branch of the legislature. Final Passage and the Governor’s
signature should be accomplished by March of 2006.
5. The only issue with our timetable is the current budget negotiations. The longer the
budget goes unresolved the longer it will take for the legislature to focus on other issues.
The department sees no impediment to the long term goal of passing this legislation.

3. BACKGROUND CHECK PROGRAM COMPONENTS

3.1. Covered Provider Types

3.1.1. Provider Type Chart

<table>
<thead>
<tr>
<th>I. Provider Types</th>
<th>No. Pilot Facilities</th>
<th>Phase-In Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Skilled Nursing Facilities/Nursing Facilities</td>
<td>443</td>
<td>11/05</td>
</tr>
<tr>
<td>2. Long-Term Care Hospitals, Swing Beds</td>
<td>29</td>
<td>11/05</td>
</tr>
<tr>
<td>3. ICFs/MR</td>
<td>1</td>
<td>11/05</td>
</tr>
<tr>
<td>4. HCBS Group Homes Over 8 Beds *</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>5. Home Health Agencies</td>
<td>256</td>
<td>11/05</td>
</tr>
<tr>
<td>6. Personal Care Agencies – Medicaid State Plan</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>7. Assisted Living Facilities (Adult Foster Care=4,305 &amp; Homes for the Aged=185)</td>
<td>4,490</td>
<td>11/05</td>
</tr>
<tr>
<td>8. Hospices</td>
<td>98</td>
<td>11/05</td>
</tr>
<tr>
<td>9. Psychiatric Hospitals</td>
<td>3</td>
<td>11/05</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>5,320</td>
<td>11/05</td>
</tr>
</tbody>
</table>

*Individual Home Help Aides ** (Michigan Quality Community Care Council)—20,000 will be included in the program.*
List the provider types included in your pilot program and the numbers of facilities/providers subject to background check requirements in the table below (mandatory provider types already included). Indicate the date you will begin phasing in background check requirements for each provider type. Indicate the date each provider type is fully subject to the background check requirements. (Add or delete rows as needed.)

* Michigan has no group homes in their waivers.
** Home Help Aides are hired by older adults and persons with disabilities and paid under Medicaid; MDCH has limited authority for this program.

3.1.2. Phase-In Description
Describe how the provider phase-in will occur (e.g., provider type, geographical time table for phase-in, etc.)
Once the legislation has been passed and an enactment date determined, the LTC providers will be notified of the changes in the law and the new requirements.

Licensing departments of the Department of Human Services and the Department of Community Health will send out notices.

Associations and membership organizations will be asked to publish in their newsletters and other publications the changes and requirements of the new laws.

3.2. Covered Direct Patient Access Employees
Provide your state’s definition of a prospective “direct patient access employee,” subject to the background check pilot program requirements.

Direct access means access to the individual or the property of a patient, resident, or consumer of a long-term care facility or agency through employment or through a contract with such a facility or provider (See Attachment 1).

3.3. Other Program Definitions
Provide any other definitions pertinent to your state’s background check program.
Vulnerable Adult

(i) An individual age 18 or over who, because of age, developmental disability, mental illness, or physical disability, requires supervision or personal care or lacks the personal and social skills required to live independently; or

(ii) A person 18 years of age or older or a person who is placed in an adult foster care family home or an adult foster care small group home; or

(iii) A vulnerable person not less than 18 years of age who is suspected of being or believed to be abused, neglected, or exploited.

Volunteer:

An individual who performs services who is not paid for the services or otherwise considered an employee or contractor of the facility.

Independent contract

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 background check requirements of MCL 333.20173 (Public Health Code) to provide the contracted services to the health facility or agency on behalf of the organization or agency.

Independent contract means a contract entered into by an adult foster care or 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, adult foster care facility or agency on behalf of the organization or agency.

Health facility or agency, except as provided in section 20115, means:

(a) An ambulance operation, aircraft transport operation, non-transport pre-hospital life support operation, or medical first response service.

(b) A clinical laboratory.

(c) A county medical care facility

(d) A freestanding surgical outpatient facility.

(e) A health maintenance organization.

(f) A home for the aged

(g) A hospital.

(h) A nursing home.

(i) A hospice

(j) A hospice residence

Home for the aged means a supervised personal care facility, 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, non-transient, individuals 60 years of age or older. Home for the aged includes a supervised personal care facility for 20 or fewer individuals 60 years of age or older if the facility is operated in conjunction with and as a distinct part of a licensed nursing home.

Adult foster care facility means a governmental or nongovernmental establishment that provides foster care to adults. Subject to section 26a(1), adult foster care facility includes facilities and foster care family homes for adults who are aged, mentally ill, developmentally disabled, or physically disabled who require supervision on an ongoing basis but who do not require continuous nursing care.
4. **BACKGROUND CHECK PROCESS**

Provide a step-by-step, detailed description of your program’s background check process. If you have developed background check forms for your program, indicate this fact and include the form(s) as an attachment.

**4.1. Written Disclosure**

Describe the process and policies regarding how an applicant will provide a written disclosure of his or her background history. Include any background disclosure form(s) as an attachment.

Attachment 3:

1) AFC-HFA - Application for Conditional Employment or Independent Contract Pending Criminal History Check” states that the person has no criminal history and gives permission for a background check.

2) Nursing Home, Hospital Long-term Care Unit, County Medical Care Facility - Application for Conditional Employment or Conditional Clinical Privileges Pending Criminal History Check

3) DRAFT - AUTHORIZATION FOR FINGERPRINT-BASED BACKGROUND CHECK (for use during Pilot Project - still subject to ongoing revisions and finalization).

**4.2. Written Authorization**

Provide the details regarding the applicant’s written statement authorizing the completion of the state and national fingerprint-based criminal history check. Include any authorization form(s) as an attachment.

The same form mentioned above is used to authorize the background check. Attachment 3.

**4.3. Collection of Fingerprints**

Provide a detailed description on how your program will collect a prospective employee’s set of 10 rolled fingerprints to be used to check state and federal criminal records. Your description must address each of the following:

**4.3.1. Technology**

Describe the technology your program will use to collect the applicant’s 10 rolled fingerprints (e.g., live scan or hard card mailed, hard card scanned, etc.).

Fingerprints will be collected by a vendor using live scan devices and will be electronically submitted to the Michigan State Police (MSP). In those instances where local law enforcement, i.e. sheriff, takes the fingerprints and does not have the current technology, hard card scanned copies of prints will be taken.

**4.3.2. Collection Agency**

Describe the agency or party responsible to collect fingerprints under your program.
Michigan State Police has contracted with a vendor to provide automated applicant fingerprint submissions. Also, some sheriff departments and local law enforcement agencies have elected to provide automated applicant fingerprint submissions. The vendor is:

1) **Identix Identification Services**, 1650 Wabash Ave., Suite D, Springfield, IL 62707 (217) 793-2080

   [www.identix.com/IIS](http://www.identix.com/IIS) Identix Identification Services (IIS) offers electronic fingerprinting services designed to provide businesses and governmental agencies with the capability to obtain fingerprint-based criminal history checks for job applicants and licensees. They customize fingerprint solutions to meet the needs of any business or government agency. IIS’ services are designed to provide customers with a fast, simple, convenient, and professional fingerprinting experience.

### 4.3.3. Fingerprint Collection Locations

Describe where the collection of fingerprints occurs, including:
- How many collection sites will exist statewide
- How far applicants will typically need to travel
- Location of collection sites for applicant’s ease (e.g. location at facility, direct access patient employee training or test sites, etc.).

Fingerprint vendors are required to meet the following standards:

No applicant shall drive more than 50 miles one way to be fingerprinted. The vendors will accomplish this by having some physical office locations and by utilizing mobile fingerprint capture stations. When the vendor contracts come up for renewal and the Background Check system has been up and running, plans are to try and shorten the distance applicants may have to travel to 25 miles.

The appointment must be scheduled within 10 business days of when the applicant contacts the vendor.

An individual may go to a local law enforcement agency or county sheriff if they have live scan capabilities. At this time, we do not know how many have live scan capabilities. (There are 83 counties, each with a sheriff, and over 800 law enforcement agencies in the state.)

### 4.3.4. Transmittal Methods

Describe how fingerprints will be transmitted to the agency conducting the state criminal history check and the IAFIS at the FBI.

Fingerprints are captured on the live scan device.

Demographic data collected.

Fingerprints and data to be electronically transmitted to Michigan State Police.

MSP will process the fingerprint-based background check against the Michigan database. Once the state search is completed MSP will electronically forward the fingerprints and demographic data to the FBI using our IAFIS connection.

### 4.4. Records Check

Describe how your program will complete the check of registries, other databases, state and national criminal history record search. Your description must address each of the following:
4.4.1. Registry/Database Check

Describe what registries (e.g., nurse aide registries, OIG Exclusion List, etc.,) and databases your program requires to be checked, including:

- Who is responsible for completing this function
- How the function is performed
- When the function will be performed
- Who evaluates the information
Background check analysts hired for the pilot will be checking all of the following databases using electronic checking mechanisms set up for the project. Currently, we anticipate that Michigan State University will hire and employ the background check analysts with input from state agencies and locate them within the effected state departments.

Facilities will notify the appropriate analyst when they want to hire an applicant and the applicant has given permission for the background check.

After completing the registry checks, the analyst will notify the facility of the results.

LTC facilities evaluate the information. If disqualifying information is found, the facility need not proceed with fingerprinting procedures.

**Michigan Certified Nurse Aide Registry (CNA)**

- Function will be performed online using applicant’s social security number, certificate number, first and last name
- Out-of-state registry checks will be performed simultaneously once they have been identified.

**Sex Offender Registry (SOR)**

- Function is performed online or by phone – name based search

**Internet Criminal History Tool (ICHAT)**

- Function is performed online (subscription required) – name based search

**Healthcare Integrity and Protection Data Bank (HIPDB)**

- As part of the licensing agencies, background check analysts will have access to this data.

If no disqualifying information is found by the background check analyst, the LTC facility will generate a fingerprint check.

**Criminal History Record (CHR)**

- Michigan State Police are responsible for checking this database.
- Function is performed electronically (name/birth date/SSN based search).
- Function will be performed upon receipt of fingerprints and applicants identifying information.

**Automated Fingerprint Identification System (AFIS)**

- Michigan State Police are responsible for checking this database.
- Function is performed electronically
- Function will be performed upon receipt of fingerprints

**Integrated Automated Fingerprint Identification System (IAFIS)**

- Federal Bureau of Investigation is responsible for checking.
- Function is performed electronically.
- Function will be performed upon receipt of fingerprints from MSP.

Disqualifying information is summarized by state licensing agencies’ background check analysts but LTC facilities evaluate the information.

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**4.4.2 State Criminal Records Check**

Describe the process for completing the state criminal history records check, including:

- Agencies involved
Responsibilities of each agency
Who will conduct the check
Amount of time allocated
How findings are transmitted

**Step 1:** Applicant needs to be fingerprinted at either one of the two state approved vendors (Identix or Promissor) or at a law enforcement agency.

**Step 2:** Once the fingerprints are captured they will be forwarded electronically to Michigan State Police on a daily basis, or by use of card method if law enforcement agency does not have livescan equipment.

**Step 3:** MSP will run the fingerprints against the state Automated Fingerprint Identification System (AFIS). If the fingerprints do not match a set of prints in the AFIS database, the system will generate a “no-hit” response. If the fingerprints do match a set of fingerprints in the AFIS database, the system will generate a “hit” response, which will include the criminal history rap sheet.

**Step 4:** Once MSP has finished the state search, the fingerprints will be electronically forwarded to the FBI through the Integrated AFIS (IAFIS) – See 4.4.3

**Step 5:** Once MSP has received the FBI response, the state and federal responses are mailed to the applicant if their record is “clean”. If there is a criminal history record, it will be sent to the state licensing agency to summarize and notify the facility.

***Total processing time, from the time MSP receives the fingerprints (Step 2) until MSP mails the responses (Step 5) is a minimum of 5 business days and a maximum of 10 business days. If fingerprints are not electronic the processing time may increase up to 60 days. This includes the steps indicated in 4.4.3.***

---

4.4.3. National Criminal Records Check

Describe the process for completing the national criminal records check through the IAFIS, including:
- Agencies involved
- Responsibility of each agency
- Who will submit the request
- The general timeframe allocated
- How information is transmitted to the state agency and/or provider, as necessary

**Step 1:** Once MSP has finished the state search, the fingerprints will be electronically forwarded to the FBI through the IAFIS.

**Step 2:** After the FBI completes processing the fingerprints a response is generated and sent to MSP.

**Step 3:** Once MSP has received the FBI response, the state and federal responses are mailed to the applicant and the facility, if the record is “clean”. If there is a criminal history record, it will be sent to the state licensing agency to summarize and notify the facility and the applicant.

---

4.4.4. Checking Sequences

Describe in numerical order, the sequence in which the background check will be completed.
1. Applicant provides permission for a background check with his/her signature.
2. The provider notifies the appropriate Background Check Analyst to conduct registry searches.
3. Background Check Analyst will search appropriate registries and state or federal databases for evidence of disqualifying offenses. (Note: The registry and database check will be used to verify any existing substantiated findings of abuse, neglect, or misappropriation of property.)
4. Applicant makes an appointment with vendor for a fingerprint check.
5. Livescan fingerprints are transmitted by the vendor to Michigan State Police
6. MSP runs criminal background check. If no hits...
7. MSP transmits fingerprints to FBI
8. FBI runs criminal background check.
9. FBI returns results to MSP.
10. If no hits, a certified letter is generated to applicant and provider/facility stating that the person is eligible for employment.
11. Hits found result in the record being forwarded to the state-licensing agency.
12. Criminal record is summarized
13. A letter with summary is sent to provider/facility and applicant.

4.5. Elimination of Unnecessary Checks
Describe how your program will permit the background checks to be terminated at any stage based on disqualifying information, including:
- How the termination occurs
- Who receives the notice of the termination
- What information is shared, if a disqualifying offense is the basis for termination
- How the disqualifying information is communicated to all appropriate parties, if a disqualifying offense is the basis for the termination
While background check analysts are conducting the registry checks, the process may be terminated when disqualifying information is discovered and the facility is notified.

Currently, notification of the Department is not required if an applicant is found to have disqualifying attributes unless there is a response from the MSP/FBI. With the pilot system of background checks, analysts will be doing the checking, and the state agencies will then have the information on file.

At the next stage of the background check, MSP will send notice of a clean record to the applicant, but disqualifying information will be sent to the state-licensing agency (DCH or DHS).

Currently the MSP will send whatever is in their criminal history data base (regarding the new employee) to the licensee. Only where a criminal record is found in the FBI data base is the report sent to the Department of Human Services, where a summary of the report is prepared and forwarded to the licensee and the applicant.

The state agency background check analyst will summarize the record and send an official notification, with the summary, to the provider and the applicant.

This is currently only the case where a criminal history is found in the FBI data base.

The provider will officially notify the applicant of the findings and terminate the hiring process. The notice to the applicant will contain information of the person’s right to an appeal, along with a signature line in which to do so.

There is currently no appeal process for direct services staff that are adversely affected (i.e., not hired or terminated) due to their criminal background. An appeal process is being instituted in the new legislation (Attachment 1, page 51).

If the applicant believes that the FBI report contains incomplete or inaccurate information – the applicant can contact the FBI directly to challenge the accuracy of the FBI report.

4.6. Background Check Costs and Fees

Indicate the costs associated with each level of check (i.e., state registries, state criminal records, FBI national records). Indicate what fees (if any) will be charged for job applicants or providers for each of the following (insert additional rows as needed):

<table>
<thead>
<tr>
<th>Background Check Component</th>
<th>Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fingerprint Capture</td>
<td>$16</td>
</tr>
<tr>
<td>Nurse Aide Registry</td>
<td>$0</td>
</tr>
<tr>
<td>OIG Exclusions List</td>
<td>$0</td>
</tr>
<tr>
<td>Other Registry/Databases (Explain)</td>
<td>$0</td>
</tr>
<tr>
<td>Sex Offender Registry (online check)</td>
<td>$0</td>
</tr>
<tr>
<td>ICHAT (online check) (60% of checks are from non-profits at $0.)</td>
<td>$0 - $10</td>
</tr>
<tr>
<td>State Criminal History Check</td>
<td>$30</td>
</tr>
<tr>
<td>FBI IAFIS Check</td>
<td>$24</td>
</tr>
<tr>
<td>Other</td>
<td>$0</td>
</tr>
</tbody>
</table>

4.7. Fee Payment Process:

Describe the fee payment process, including:

- Who will pay the fee(s)
- To whom the fees will be paid
• What rate will be paid
• What services are included

**Note**: Include a copy of your fee schedule, if applicable.

• For facilities who don’t have a Medicaid cost settlement process, AFC and HFA will provide a payment voucher.
• Fees will be paid to the fingerprint vendor, who will forward it on to the Michigan State Police.
• The rate is stated above.
• Services include the MSP check, IAFIS check and reports back to the appropriate state agency

5. **FITNESS DETERMINATION**

5.1. **Fitness Determination Description**

Describe who will review the background check results and make the fitness determination.

If “hits” are discovered during the background check process the information will be sent directly to the state-licensing agency. A summary of the findings will be made by the state agency and the summary will be sent to the facility and applicant. The summary refers the facility to the statutory requirements.

5.1.1. **State Fitness Determination Decision**

Check the box below; indicating if the fitness determination is made solely by the state agency.

Yes

If you have checked “Yes,” please describe the process, including:
• The state staff responsible for making the determination
• How the determination is made
• What, if any, criminal history information is passed on to the requesting provider (e.g., yes/no communication (red light, green light))
For all “hits”, the Background Check Analysts in each department will make the determination by reviewing the FBI report and checking required registries and other background information. Where necessary, staff will consult with attorneys to determine the precise out-of-state convictions and if necessary will make contact with other state law enforcement regulatory offices.

A summary of criminal history conviction information, registry information, other related information (e.g. licensure) and a determination as to whether the applicant has committed any prohibited offenses or substantiated findings of abuse or neglect will be sent to the provider and the applicant.

The providers will retain the discretion not to hire the individuals even if they are cleared for hiring by the state fitness determination.

Employment decisions are made solely by the licensee – the state does not determine whether the new direct service staff member is eligible or not based on their criminal background - this is the decision of the employer. They are, however, in violation if they do hire someone with disqualifying backgrounds. Facilities can also dismiss applicants based on the lack of good moral character (MCH 400.713 (3)(e) and R 400.1151).

5.1.2. Provider Fitness Determination

Check the box below, indicating whether the fitness determination is made by the provider.

Yes        No

If you have checked “Yes,” please describe the process, including:

- Whether providers conduct the background check request and receive the criminal history information directly
- If providers have some or full discretion (e.g. red light, yellow light, green light)
- How the determination is made
- How the information regarding background check results (“hits”) and provider employment decisions will be collected for CMS evaluation reports
• Providers generate the background check process by notifying the background check analysts at the appropriate state-licensing agency.

• Applicants and providers are notified directly by MSP with a certified letter, when no criminal history is found. The facility is also notified by MSP at this time.

• When MSP or the FBI finds a criminal history, the licensing state agency will be notified of the findings. For Assisted Living Facilities (Adult Foster Care and Homes for the Aged), the Dept of Human Services will receive the report. For all others, the Dept of Community Health will receive the reports.

• The state licensing agency’s background check analyst will then summarize the findings and notify the provider and the applicant. State agencies will collect data on the number of applicants with “hits” and the employment decisions.

• The onus is on the licensee to follow the statute regarding what crimes would disqualify a worker – the decision is not made by the state – the employer makes the hiring decision.

• The applicant can obtain a copy of his/her FBI report by submitting a written request to the state agency.

Currently DHS does not receive any notification that the applicant has a clean record but the facility does. This will be remedied in the pilot program since analysts will be generating the notices.

5.1.3. State and Provider Fitness Determination Decision

Check the box below, indicating if both the state agency and the provider have a role in making the fitness determination decision.

Yes  No

If you have checked “Yes,” please describe the following:
• The state staff responsible for making the determination
• How the determination is made
• What, if any, criminal history information is passed on to the requesting provider (e.g., yes/no communication (red light, green light))
• If providers have all or some discretion in the fitness determination (e.g. red light, yellow light, green light).
• Background Check Analysts will be located within the affected state departments and trained to determine review background records with “hits.”

• The determination will be made based on established guidelines created from state and federal law and with input as necessary from legal consultants.

• A summary of an applicant’s criminal history and copies of checked registry findings and other relevant information will be sent to the requesting provider and the applicant with an indication of whether disqualifying convictions or offenses are present.

• For applicant’s with clear criminal histories, registry checks/other relevant information, a simple notice of “no disqualifying information identified” will be generated to the provider and the applicant.

• Employment decisions are made solely by the licensee – the state does not actually recommend that the new staff member be hired or not – this is the decision of the employer. The state only reports disqualifying information. The programs are, however, in violation if they do hire someone with disqualifying backgrounds. Facilities can also dismiss applicants based on the lack of good moral character (MCH 400.713 (3)(e) and R 400.1151).

5.2. Missing Dispositions
Describe how your program handles:
• Missing disposition information
• Incomplete or incorrect criminal history information
• How this information may factor into the fitness determination

• Background Check Analysts will be hired in a joint effort between MSU and the State of Michigan licensing agencies. Part of their duties will include checking for missing disposition information. They will have available legal consultants and other regulatory agency resources for attempting to resolve any incomplete or incorrect information.

5.3. Disqualifying Information
The table below includes the federal barring offenses described in section 1128(A) of the Social Security Act (4.2. U.S.C). Add the disqualifying information that bars employment to a prospective direct patient access employee under your state’s pilot program. Include applicable statutory, regulatory or other citations. (Add or delete rows as needed.)

<table>
<thead>
<tr>
<th>Citation</th>
<th>CMS Disqualifying Offense</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEC. 1128. [42 U.S.C. 1320a-7] (a)</td>
<td>MANDATORY EXCLUSION. The Secretary shall exclude the following individuals and entities from participation in any Federal health care program (as defined in section 1128B(f)):</td>
</tr>
<tr>
<td>SEC. 1128(a)(1)</td>
<td>Conviction of program-related crimes. Any individual or entity that has been convicted of a criminal offense related to the delivery of an item or service under title XVIII or under any State health care program.</td>
</tr>
<tr>
<td>SEC. 1128(a)(1)(2)</td>
<td>Conviction relating to patient abuse. Any individual or entity that has been convicted, under Federal or State law, of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service.</td>
</tr>
<tr>
<td>Citation</td>
<td>CMS Disqualifying Offense</td>
</tr>
<tr>
<td>----------</td>
<td>---------------------------</td>
</tr>
<tr>
<td>SEC. 1128(a)(1)(3)</td>
<td>FELONY CONVICTION RELATING TO HEALTH CARE FRAUD. Any individual or entity that has been convicted for an offense which occurred after the date of the enactment of the Health Insurance Portability and Accountability Act of 1996, under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a health care program (other than those specifically described in paragraph (1)) operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.</td>
</tr>
<tr>
<td>SEC. 1128(a)(1)(4)</td>
<td>FELONY CONVICTION RELATING TO CONTROLLED SUBSTANCE. Any individual or entity that has been convicted for an offense which occurred after the date of the enactment of the Health Insurance Portability and Accountability Act of 1996, under Federal or State law, of a criminal offense consisting of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.</td>
</tr>
<tr>
<td></td>
<td>FINDING OF PATIENT OR RESIDENT ABUSE. Any substantiated finding by a State agency under section 1819 (g)(1)(c) or 1919(g)(1)(c) of the Social Security Act (42 U.S.C. 1395i–3(g)(1)(c), 1396r(g)(1)(c) or a Federal agency that a direct patient access employee has committed (A) an act of patient or resident abuse or neglect or a misappropriation of patient or resident property.</td>
</tr>
<tr>
<td>Citation</td>
<td>State Disqualifying Offenses</td>
</tr>
<tr>
<td>----------</td>
<td>-----------------------------</td>
</tr>
</tbody>
</table>
Excerpt from the proposed legislation:

(a) A RELEVANT CRIME AS DESCRIBED IN SECTION 1128 (a) OF THE UNITED STATES SOCIAL SECURITY ACT

(b) A SUBSTANTIATED FINDING BY A STATE AGENCY UNDER SECTION 1819(G)(1)(C) OR 1919(G)(1)(C) OF THE SOCIAL SECURITY ACT

(c) A felony or an attempt or conspiracy to commit a felony, OTHER THAN A RELEVANT CRIME DESCRIBED IN SECTION 1128(A) OF THE UNITED STATES SOCIAL SECURITY ACT, within the 15 years UNLESS 15 YEARS HAS ELAPSED SINCE COMPLETION OF ALL TERMS AND CONDITIONS OF SENTENCING AND REQUIREMENTS OF PAROLE immediately preceding PRIOR TO the date of application for employment or clinical privileges or the date of the execution of the independent contract.

(d) A misdemeanor, OTHER THAN A RELEVANT CRIME AS DESCRIBED IN SECTION 1128 A OF THE UNITED STATES SOCIAL SECURITY ACT, involving abuse, neglect, assault, battery, or criminal sexual conduct or involving fraud or theft against a vulnerable adult as that term is defined in section 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m, or a state or federal crime that is substantially similar to a misdemeanor 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.

There are no specific convictions or offenses that are banned. Michigan law does not specify in law who the victim of a crime is.

The applicant (facility/provider) shall be responsible for assessing the good moral character of the employees of the facility. "Good Moral Character" is defined in MCL 400.705 Definitions;

Sec. 5. (1) "Good moral character" means good moral character as defined in Act No. 381 of the Public Acts of 1974, being sections 338.41 to 338.47 of the Michigan Compiled Laws.

5.4. Abuse, Neglect & Misappropriation of Property Definitions

Provide your program’s definitions for substantiated findings of abuse, neglect, and misappropriation of property. If the federal long term care definitions are not used, indicate if there are other state-defined disqualifications. If “disqualifying information” is defined in statute or regulation, please indicate the citation.
<table>
<thead>
<tr>
<th>Substantiated Finding</th>
<th>CMS Definition</th>
<th>State Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abuse</td>
<td>The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting harm, pain, or mental anguish.</td>
<td>The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. Abuse includes, but is not limited to non-accidental physical or mental injury, verbal abuse, sexual abuse, involuntary seclusion, or maltreatment.</td>
</tr>
<tr>
<td>Misappropriation of Resident Property</td>
<td>The deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent.</td>
<td>State uses CMS definition: The deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent.</td>
</tr>
<tr>
<td>Neglect</td>
<td>Failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.</td>
<td>Harm to an adult’s health or welfare caused by the inability of the adult to respond to a harmful situation or by the conduct of a person who assumes responsibility for a significant aspect of the adult’s health or welfare. Neglect includes the failure to provide adequate food, clothing, shelter, medical care, or other goods and services necessary to avoid physical harm, mental anguish, or mental illness.</td>
</tr>
</tbody>
</table>

5.5. Timeliness
Describe the length of time allowed for completing the fitness determination, including:
- When the time frame begins
• How long it generally takes to receive the background check results
• How long it generally takes to make the fitness determination
• Any fitness determination deadlines

- The time frame begins when the applicant contacts the fingerprint provider for an appointment, which is to occur within 10 days of contact.
- It will generally take one to two working days to receive negative (no criminal record) background check results.
- It may take as long as seven to ten for a background check that reveals a criminal record to be processed and summarized by the licensing agency and for the facilities to be notified. Non-electronic fingerprints may take up to 60 days to process.
- This is something that will be determined as the system is put into place. The plan is for the entire process to take no more than 30 days after a completed record is obtained.

6. EMPLOYMENT/STAFFING AGENCIES

6.1. Employment AgencyPermission Description
Check the box below, indicating whether your program permits employment agencies, including temporary staffing agencies, to initiate and conduct background checks.

Yes
No **The licensee has to initiate the background check**

6.2. Employment Agency Role Description
If you have checked “Yes,” please describe the following:
- The role of employment agencies in conducting background checks under your program
- What background check information is issued to the employment agency
- Compliance oversight and enforcement

7. PROVISIONAL EMPLOYMENT

7.1. Provisional Employment Allowed
Check the box below, indicating whether your program allows for a period of provisional employment while the background check and fitness determinations are being completed.

Yes
No

7.2. Provisional Employment Criteria
If you have checked “Yes,” please describe the following:
- Provider criteria or conditions for allowing provisional employment
- Applicant criteria or conditions for allowing provisional employment
- Provisional employment time limits

See Attachment 3. The form to be completed and signed by the applicant provides permission for the background check and for termination of employment if disqualifying information is found.

There are no time limits set.

7.3. Supervision Levels
Describe your program’s requirements regarding supervision, including:
- The level of supervision during provisional employment
- If provider type factors into supervision level
- If employee category factors into supervision level

Supervision levels required by regulation are typically monitored through site reviews, performance evaluations and reviews of adverse events and complaints.

The new hire will be supervised as a probationer. Provider type will most likely factor into supervision level, although it will depend on legislation and regulation currently affecting health facilities and health professions. Employee category will be a factor. Food service employees will require less supervision than a nurse aide, who might typically be having physical contact with a facility resident.

** There are no provisions for extra supervision for new hires.

7.4. Special Supervision Considerations

Describe any special considerations given to supervision requirements for:
- Small rural providers
- Home health agencies
- Others

None

8. BACKGROUND CHECK ACCURACY

8.1. Error Check Description

Describe how your program ensures the validity and accuracy of the background check results. Provide the following program details:
- Internal quality assurance processes (passive, automatic error check process that does not require special action by any party)
- Complaint driven error check processes (active process dependent on an internal or external party noticing a problem and bringing it someone’s attention)

- The criminal history record (CHR) is verified as it is being built.
- Every incident on the CHR has a set of fingerprints on file.
- All fingerprints are searched against the IAFIS database for identification prior to adding the incident to the criminal history record. If an individual disputes the accuracy of their CHR response they may take their dispute to the appeal board. They will then be directed to the appropriate arresting agency to resolve the issue. Providers identifying a potential problem with the results of a background check will contact the MSP and request assistance. It is expected that fingerprint-based checks will eliminate many of the errors that arise with name-based checks due to spelling errors, identity thefts, etc.
- The Appeal Board may issue a certificate of employability if it finds that the criminal background check contains an error and that the individual is eligible for employment.

9. APPEALS

9.1. Appeal Request Description

Describe your program’s process for an applicant to appeal the results of a background check or fitness determination, including:
- Types of appeals allowed
• How an applicant files an appeals
• Timeframe for filing appeals

The following is taken from the proposed legislation creating the Appeals Process and Appeals Board. The appeal process shall be available to

(1) individuals who claim that the criminal background check report contains an error material to a determination of their eligibility for employment;

(2) individuals, UNLESS PRECLUDED BY FEDERAL LAW, who seeks to demonstrate through proof of rehabilitation, community service, employment, or other factors, that they do not present a danger to persons served by the affected facilities;

(3) individuals whose eligibility for employment under this section or under MCL 400.734a is unclear, and who seek clarification regarding their eligibility; or

(4) individuals who seek clarification about whether a particular position is covered under the statute.

Applications may be made by prospective employees, or by employers on their behalf. An individual who is denied a certificate of employability after applying under subsection (2) may not apply for another certificate of employability under subsection (2) until at least one year has passed from the date of the prior application.

The Department of Community Health and the Department of Human Services may, through administrative rules, create an expedited department administrative review process for those nonviolent felonies and misdemeanors that do not create a reasonable threat to individuals served by the affected facilities. (It is expected that the Appeal Board will determine timeframes for filing appeals.)

9.2. Appeal Process Description
Describe your program’s appeal process, including:
• How appeals are processed
• Who is responsible for the appeal decision
• Time allowed for resolution once an appeal has been filed
• Any relation to provisional employment periods
• How the number and appeal results are tracked
Applicants are able to file an appeal only if the appeal is based on a claim that the substantiated findings of abuse and neglect or misappropriation was made as a result of clear error. For example the substantiated finding actually applied to another individual or was inaccurate or falsely investigated.

The legislation being introduced to allow for appeals is planned to operate in the following manner:

• The Appeal Board shall consist of two members each of the senior licensing and regulation staff of the Departments of Community Health and Human Services; two public members appointed by the Governor; one provider member; one member of organized labor appointed by the Governor; and one consumer of long-term health care services appointed by the Governor.

• The Appeal Board may decide, upon finding clear and convincing evidence, to issue a certificate of employability and may attach any conditions it deems necessary to ensure the health safety of the individuals served by the employer’s facility or program.

• The Appeal Board shall hear all applications for appeal not eligible for internal department administrative review. They may, at their sole discretion, also agree to hear appeals from adverse departmental administrative review process decisions.

• The final decisions of the Appeal Board are subject to the Administrative Procedures Act. Any final decisions taken pursuant to the expedited department administrative review process, which the Appeal Board declines to review, are also subject to the Administrative Procedures Act.

• The Appeal Board may issue a certificate of employability if:

  1) it finds that the criminal background check contains an error and that the individual is eligible for employment;

  2) the applicant, by clear and convincing evidence, demonstrates proof of thorough rehabilitation, community service, employment, or other similar factors, that the applicant does not present a danger to persons served by the affected facilities;

  3) the applicant’s offense is not a disqualifying offense under this part or under MCL400.734a;

  4) the applicant would not be in a position where the applicant would regularly have direct contact with or provide direct services to patients or residents.

• The appeal process shall not be available for felonies involving abuse, neglect, assault, battery, or criminal sexual conduct or involving fraud or theft against a vulnerable adult as that term is defined in section 145m of the Michigan Penal Code, 1931 PA 328, MCL 750.145m, or a state or federal crime that is substantially similar to a felony described in this subdivision until at least thirty-six months from the completion of all sentencing requirements including probation, parole and restitution.

• A certificate of employability issued by the Appeal Board or through the expedited review process shall enable the holder of that certificate to work in any facility covered under MCL333.20173 or under 400.734a.

• The number and appeal results will be tracked and recorded by the Appeal Board on a regular basis that will be determined if and when the law is passed.

An Appeal will be available only if the appeal is based on the validity of a “findings” existence.
10. REHABILITATION REVIEW

10.1. Rehabilitation Review Provision
Check the box below, indicating whether your program includes a rehabilitation provision that permits employment for individuals with previous disqualifying behaviors or offenses.

Yes  No

If you have checked “Yes,” please describe the following:

10.2. Rehabilitation Review Application
Describe your program’s rehabilitation review application process, including:
• How an individual requests a rehabilitation review
• Rehabilitation review scheduling
• Timeliness, including general time frame for scheduling rehabilitation review

Rehabilitation is not open to persons with substantiated findings of abuse, neglect or misappropriation. (See details in 9.2 above.)

Upon receiving a finding of a criminal record that makes the applicant ineligible for direct access to long term care residents the applicant or facility may file an appeal by signing a statement of such and forwarding it to the licensing agency.

The agency will decide whether an administrative review at the state agency level would be appropriate, and if not, will send the appeal on to the Appeal Board for review.

The Appeal Board shall, to the extent reasonably possible, hear and decide all applications for appeal within sixty days of receipt of a completed investigation and record. Rehabilitation is only open to those not precluded by federal law.

10.3. Rehabilitation Review Criteria
Fully describe the rehabilitation review criteria used to evaluate an individual’s fitness for employment.

As part of the pilot program, the state agencies will develop policies and/or administrative rules that will provide guidelines to determine clear and convincing evidence that the applicant does not present a danger to patients and residents.

The Appeal Board will develop guidelines to address whether extra oversight or reporting requirements will be necessary, or whether extra supervision will be needed at the facility.

Decisions by the Appeal Board will be made within the framework of the Administration Procedures Act.

The Appeal Board may issue a certificate of employability if the applicant, by clear and convincing evidence, demonstrates proof of thorough rehabilitation, community service, employment, or other similar factors, that the applicant does not present a danger to persons served by the affected facilities, unless prohibited by federal law.

10.4. Rehabilitation Review Process
Describe the rehabilitation review process, including:
• The process for reviewing the rehabilitation review application and information
• The person(s) responsible for reviewing the rehabilitation information
• How the fitness determination decision is made
• How the number of requests and decisions are tracked
• The rehabilitation review process will begin with the state agency reviewing the application and information.
• The Appeal Board may issue a certificate of employability if the applicant, by clear and convincing evidence, demonstrates proof of thorough rehabilitation, community service, employment, or other similar factors, that the applicant does not present a danger to persons served by the affected facilities, unless prohibited by federal law.
• Requests and decisions will be tracked by the licensing agency and the Appeal Board.

10.5. Rehabilitation Review Appeal
Describe any appeal process allowed under your program for individuals whose rehabilitation review has been denied, including:
• How appeals are processed
• Who is responsible for the appeal decision
• Time allowed for resolution once an appeal has been filed
• How the number and appeal results are tracked

• Both state licensing agencies will be in a position to make determinations concerning a person’s eligibility based on the law. For appeals that are less clear or where rehabilitation is being claimed, the Appeal Board will make the decision.
• Resolution will be expected within two weeks of filing unless special circumstances exist. This may not be possible if a higher number of appeals are filed than expected.

10.6. Relapse of Offenders
What additional or special steps, if any, will be taken to prevent individuals approved to be hired as a direct access employee from relapsing?

At this time there is no provision for a prevention mechanism except for the training being provided by the prevention and training grant.

Note: Include any relevant forms, brochures, fact sheets, etc., as an attachment.

11. BACKGROUND CHECK PROCESS FLOW
11.1. Background Check Process Flow Chart
Complete a flow chart of your program’s background check process. A Background Check Pilot Flow Chart template is provided on the following page, reflecting the major processes and decisions required under the pilot. Update the Background Check Pilot Flow Chart (or delete and create your own), to provide a visual diagram and flow to reflect how an applicant’s background check is conducted and a fitness determination issued under your program. Add, delete or modify the flow chart processes, as appropriate.
Applicant applies for patient direct access position at pilot facility → Request written disclosure & provider allows provisional

LTC Provider determines

End

Employability Determined

No Hir

Hir

Denied

Appeal

Granted or Denied

Fires Appeal

No Hit

Employability Determined

Facility receives summary findings

Results sent to Background Check Analyst to summarize findings

Provider conducts web-based search of registries and substantiated findings database

No Hits

Vendor obtains 10 rolled fingerprints from applicant

Transmit fingerprints to Michigan State Police

State criminal records checked

FBI IAFIS criminal records checked

No Hit

Application receives summary of findings

No Hit

MICHIGAN PROGRAM FOR BACKGROUND CHECKS PROCESS
12. COMPLIANCE MONITORING & FEEDBACK

12.1 Program Monitoring Activities
Describe your program’s activities to monitor compliance, including:

12.1.1 Background Check Procedures
The steps you will take to ensure pilot program facilities/providers are taking appropriate actions on all prospective direct access employees, as required, including:
- Obtaining written disclosure
- Obtaining written authorization
- Obtaining 10 rolled fingerprints
- Referring/conducting applicants for background check determination (as applicable)
- Making fitness determination (as applicable)
- Making appropriate hiring, termination decisions, etc.

As this pilot is encompassing the entire state of Michigan, monitoring for the program will be conducted by the state agencies who oversee licensing. Facilities that are required to renew their licenses will be asked to submit information on the previous license period’s direct access employment activities. When site visits are conducted, monitors will review a sample of records of employees hired since the last monitoring visit for documentation of appropriate background check procedures.

12.1.2 Entity Sanctions and Feedback
Describe any enforcement action or penalties issued to noncompliant facilities/providers. Describe the mechanisms in place to facilitate feedback from providers.

Facilities found to be non-compliant with the law will be issued a citation for a rule infraction and will be required to take corrective action. Penalty will be dependent on the severity of the violation of the individual laws that regulate the identified facilities as to whether a license can be revoked, summarily suspended or refused to be renewed.

Providers will continue to have access to the licensing agency and their appeal process. The feedback received in relation to background checks issues will be compiled and forwarded to the evaluation team of the project. (Michigan Administration Procedures Act)

12.2 Unintended Negative Effects
Describe how your program will prevent or limit negative, unintended results, such as impairing recruitment of prospective, qualified long term care workers, including:
- Ease in providing fingerprints
- Avoiding stigma
- Promoting value of a “clean” background check
- Avoiding costs to the applicant
- Etc.
Fingerprint vendors have signed a contract ensuring that fingerprints will be taken within 10-day’s of an applicant’s request for an appointment.

Stigma will be avoided by keeping records confidential and sharing information only when required by law.

Applicant costs should involve no more than the cost of transportation to the fingerprinting vendor. Due to the increase in gasoline prices, the project will be working to shorten the distance that an applicant would have to drive in order to reach a fingerprint vendor.

Medicaid will help cover costs and Medicare is expected to proportionally share costs following the grant period.

13. EDUCATION & TECHNICAL ASSISTANCE PLAN

13.1. Communication – Public Awareness
Describe the methods you will use to communicate your program’s requirements to the provider community, potential employees and general public. Include any brochures, flyers, etc. as attachments.

The current plan to communicate the program’s requirements to providers is to issue press releases at the time the legislation is passed and again at the time of the enactment of the law. In addition, information will be included in notices that are generated from the licensing agencies. Statewide associations, coalitions and membership organizations will also be provided with the information to share in their communications with providers, by newsletters, conferences and meetings.

13.1. Technical Assistance Methods
Describe the ongoing technical assistance methods you will deliver to facilities/providers, to ensure the successful implementation of your program.

- Technical assistance will be provided through annual provider training, newsletters and policy bulletins. All affected providers will be given information about the new background check procedures. State licensing and regulatory agencies for affected providers will receive technical assistance training to enable them to provide technical assistance to their affected programs. Technical assistance will be provided by the licensing agencies on an ongoing basis when on-site inspections are conducted or upon request.
- Designated state criminal background check analysts will be available to answer questions via toll free telephone numbers.
- Trainings and seminars will be organized in partnership with long term care provider organizations and professional societies.

14. MANAGEMENT

14.1. Management Program Description
Fully describe your program’s management and staffing plan, including:
- Staffing requirements for each program component of the program
- Staff responsibilities to carry out the program duties
- Responsibilities of third parties or contractors
The state agencies in charge of licensing long term care facilities (DHS & DCH) will increase staffing to include background check analysts. Grant funds will cover up to 3 additional staff members within the 3 year grant. Pending legislation includes funding for additional staff. MSP is contracting with two fingerprint vendors to collect fingerprints from applicants using mobile units or at office locations.

(See Attachment 4)

Note: Include an organizational chart as an attachment, to reflect all key roles and staff responsible for administrating your background check pilot program.

15. SYSTEM INFRASTRUCTURE

15.1. Describe System Infrastructure
Describe in detail your program’s system infrastructure that will be used to implement your program, including:
- Type of equipment used
- Information systems
- Any additional infrastructure

Livescan fingerprinting equipment will be used by the fingerprint vendors, and by law enforcement agencies with the technology. Fingerprints will be transmitted to MSP. For those agencies that do not have such equipment, hard copies (card scans) will be used and sent by mail to MSP. MSP will scan the prints and transmit them electronically to the FBI.
(See Attachment 2)

15.2. System Design Flow Chart (See Attachment 2)
Include a background check system design flow chart that provides an overview of the system(s) that will be used, sequence of transmittal actions, etc, to reflect your program’s system functionality. Include this flow chart as an attachment.

16. PROGRAM IMPLEMENTATION

16.1. Implementation Timeline
Update the timeline template below, to reflect the actual date (by quarter) that you will begin implementation for each major milestones in your pilot program (January 2005 – September 2007). Note: You may phase in the pilot program, but all requirements must be implemented no later than March 31, 2006. (Add or delete rows as necessary.)

<table>
<thead>
<tr>
<th>Major Tasks/Activities (Mile Stones)</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1st Qtr</td>
<td>2nd Qtr</td>
<td>3rd Qtr</td>
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<tr>
<td>1. Establish Work Group</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Establish Advisory Committee</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Evaluate current Background Check System</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Identify data sources</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Collect data</td>
<td>X</td>
<td>X</td>
<td></td>
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<tr>
<td>Analyze data</td>
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<td></td>
<td></td>
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<tr>
<td>Major Tasks/Activities (Mile Stones)</td>
<td>2005</td>
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<tr>
<td></td>
<td>1st Qtr</td>
<td>2nd Qtr</td>
<td>3rd Qtr</td>
</tr>
<tr>
<td>Inform new system</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>3. Build &amp; implement new system</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coordinate state agencies’ processes (data collection, decision-making, appeals)</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Construct Appeals Board</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Notify facilities, associations, coalitions, of changes</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Implement new Background Check process</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>4. Establish Legislative Committee</td>
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<td></td>
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<tr>
<td>Construct Legislation</td>
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<tr>
<td>Introduce legislation to committee</td>
<td></td>
<td></td>
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<tr>
<td>Introduce Legislation to state legislature</td>
<td></td>
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<tr>
<td>Pass Legislation</td>
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<td></td>
<td></td>
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<tr>
<td>Legislation takes effect</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>5. Evaluate Pilot System</td>
<td></td>
<td></td>
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<tr>
<td>Formative and feasibility evaluation</td>
<td></td>
<td></td>
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<tr>
<td>Implementation Assessment</td>
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<tr>
<td>Process evaluation</td>
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<tr>
<td>Outcome Evaluation</td>
<td></td>
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<tr>
<td>Cost Benefit/Effectiveness Analysis (ONGOING PROCESS)</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>User interface evaluation</td>
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<tr>
<td>6. Disseminate findings</td>
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</tr>
</tbody>
</table>

**17. CMS DATA REPORTING REQUIREMENTS**

**17.1. Describe Data Reporting Process**

Describe how your program will collect the data necessary to meet the CMS Background Check Pilot Program reporting requirements, including:

- Number of background checks conducted
- Number of applicants with disqualifying information, including:
  - Substantiated findings included on nurse aide registry
  - Other registries or databases
  - State criminal history record
  - FBI criminal history record
• Cost of background check/fingerprint capture
• Appeal requests and decisions
• Rehabilitation review requests and decisions

• Number of background checks conducted
  o This will be determined by calculating the number of fingerprints provided to the Michigan State Police for background checks plus the number of registry checks conducted by background check analysts.

• Number of applicants with disqualifying information, including:
  o Substantiated findings included on nurse aide registry.
    The background check analysts will conduct the nurse aide registry checks and relay any disqualifying information to the provider and the applicant. The computerized system for conducting the checks will keep track of and report on the number of checks and the number that result in disqualifying information.
  o Other registries or databases
    Other registries identified for the Background Check Project will be checked by the Background Check Analysts and will relay any disqualifying information to the provider, (SOR, ICHAT, out-of-state registries etc.). The computerized system for conducting the checks will keep track of and report on the number of checks and the number that result in disqualifying information.
  o State criminal history record
    MSP will provide these numbers
  o FBI criminal history record
    MSP will also provide these numbers

• Cost of background check/fingerprint capture
  The overall cost of the process will be calculated based on data collected by MSU researchers.

• Appeal requests and decisions
  The Appeals Board will keep records of all appeal requests, rehabilitation review requests and the decisions made.

18. PILOT PHASE-DOWN PLAN

18.1. Describe Pilot Phase-Down Process
Describe how your program will phase down at the end of the pilot period (September 30, 2007), or earlier, should CMS require the program to be phased down for any reason (e.g., inability to meet the minimum requirements listed under Section 307 of the MMA by March 31, 2006). Your phase-down plan should address the following:

• If your state’s background check pilot program requirements will continue at the end of pilot period or if the pilot requirements will cease and revert to previous regulations.
• Ensure that any state background check requirements initiated and existing based on the pilot are scheduled to end at the termination of the pilot.
• Ensure that any new payment methods initiated by the pilot will cease to apply at the end of the pilot (e.g., the CMS grant award cannot be used as a payment methodology to fund background check system and fee costs beyond the end of the pilot).
• How providers, workforce and the general public will be informed regarding the conclusion of the pilot.

The plan is for the legislation to create a permanent requirement for background checks in the manner set forth. (See Attachment 1 - Legislation)

19. ATTACHMENTS

19.1.List of Attachments
List by number and title any attachments (forms, diagrams, flow charts, organizational charts, brochures, etc. included with your state’s Background Check Pilot Program Operation Protocol.

<table>
<thead>
<tr>
<th>Attachment Number</th>
<th>Attachment Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Legislative Package (3 pieces)</td>
</tr>
<tr>
<td></td>
<td>- Public Health Code</td>
</tr>
<tr>
<td></td>
<td>- Adult Foster Care Facility Licensing Act</td>
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<tr>
<td></td>
<td>- Health Professions</td>
</tr>
<tr>
<td>2.</td>
<td>MPBC System Flow Chart</td>
</tr>
<tr>
<td>3.</td>
<td>AFC/HFA – Application for Conditional Employment or Independent Contract Pending Criminal History Check</td>
</tr>
<tr>
<td></td>
<td>Health facility or agency - Application for Conditional Employment or Independent Contract Pending Criminal History Check</td>
</tr>
<tr>
<td></td>
<td>DRAFT - AUTHORIZATION for FINGERPRINT-BASED BACKGROUND CHECK</td>
</tr>
<tr>
<td>4.</td>
<td>MPBC Organizational Chart</td>
</tr>
</tbody>
</table>
ATTACHMENT 1
PUBLIC HEALTH CODE (EXCERPT)
Act 368 of 1978

333.20173 Nursing home, county medical care facility, or home for the aged; criminal history check of employment applicants; definitions.

Sec. 20173.

(1) Except as otherwise provided in subsection (2A) AND SUBSECTION (11C), a health facility or agency that is a nursing home, CERTIFIED HOME HEALTH AGENCY, HOSPICE, PROVIDER OF SWING-BED SERVICES, PSYCHIATRIC HOSPITAL, ICF/MR FACILITY, PERSONAL CARE AGENCIES, HOME AND COMMUNITY-BASED GROUP HOME UNDER 8 BEDS, county medical care facility, or home for the aged shall not employ, independently contract with, or grant clinical privileges to an individual who regularly HAS DIRECT ACCESS OR provides direct services to patients or residents in the health facility or agency after the effective date of the amendatory act that added this section if the individual has been convicted of OR FOUND PURSUANT TO SECTION (b) TO HAVE 1 or more of the following:

(a) A RELEVANT CRIME AS DESCRIBED IN SECTION 1128(a) OF THE UNITED STATES SOCIAL SECURITY ACT

(b) A SUBSTANTIATED FINDING BY A STATE OR FEDERAL AGENCY UNDER SECTION 1819(G)(1)(C) OR 1919(G)(1)(C) OF THE SOCIAL SECURITY ACT

(c) A felony or an attempt or conspiracy to commit a felony, OTHER THAN A RELEVANT CRIME DESCRIBED IN SECTION 1128(A) OF THE UNITED STATES SOCIAL SECURITY ACT, within the 15 years UNLESS 15 YEARS HAS ELAPSED SINCE COMPLETION OF ALL TERMS AND CONDITIONS OF SENTENCING AND REQUIREMENTS OF PAROLE immediately preceding PRIOR TO the date of application for employment or clinical privileges or the date of the execution of the independent contract.

(d) A misdemeanor, OTHER THAN A RELEVANT CRIME AS DESCRIBED IN SECTION 1128 A OF THE UNITED STATES SOCIAL SECURITY ACT, involving abuse, neglect, assault, battery, or criminal sexual conduct or involving fraud or theft against a vulnerable adult as that term is defined in section 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m, or a state or federal crime that is substantially similar to a misdemeanor 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.

(2) Except as otherwise provided in this subsection and subsection (5), a health facility or agency that is a nursing home, HOME HEALTH AGENCY, HOSPICE, PROVIDER OF SWING-BED SERVICES, PSYCHIATRIC HOSPITAL, ICF/MR FACILITY PERSONAL CARE AGENCY, HOME AND COMMUNITY-BASED GROUP HOME UNDER 8 BEDS, county medical care facility, or home for the aged shall not employ, independently contract with, or grant privileges to an individual who regularly HAS DIRECT ACCESS OR provides direct services to patients or residents in the health facility or agency after the effective date of the amendatory act that added this section until the health facility or agency complies with subsection (4) or (5), or both. This subsection and subsection (1) do not apply to an individual who is employed by, under independent contract to, or granted clinical privileges in a health facility or agency before the effective date of the amendatory act that added this section.

(2A) SUBSECTIONS (1) AND (2) DO NOT APPLY TO

(1) INDIVIDUALS WHO ARE INDEPENDENT CONTRACTORS WITH THE FACILITIES OR AGENCIES COVERED BY THIS SECTION WHERE THE CONTRACTUAL WORK PERFORMED BY THOSE INDIVIDUALS IS NOT DIRECTLY RELATED TO THE CLINICAL, HEALTHCARE, OR PERSONAL CARE SERVICES DELIVERED BY THE FACILITY OR AGENCY; OR WHOSE DUTIES ARE NOT PERFORMED ON AN ONGOING BASIS WITH DIRECT ACCESS TO PATIENTS. THIS EXCEPTION INCLUDES, BUT IS NOT LIMITED TO, INDEPENDENT CONTRACTORS WHO PROVIDE UTILITIES, MAINTENANCE, CONSTRUCTION, OR COMMUNICATIONS SERVICES.

(2) INDIVIDUALS WHO ARE EMPLOYED BY, UNDER INDEPENDENT CONTRACT TO, OR GRANTED CLINICAL PRIVILEGES IN A HEALTH FACILITY OR AGENCY COVERED BY THIS SECTION OR BY MCL 400.734A BEFORE THE EFFECTIVE DATE OF THIS ACT, AS SET OUT IN SECTION (13). INDIVIDUALS WHO ARE EXEMPTED UNDER FACILITIES OR AGENCIES FOR WHOM THEY WORKED PRIOR TO THE ENACTMENT OF THIS ACT, BUT ARE ELIGIBLE FOR EMPLOYMENT WITH ANY OTHER FACILITY UNDER THIS SUBSECTION ARE NOT LIMITED TO EMPLOYMENT WITH THE HEALTH FACILITY OR AGENCY COVERED UNDER THIS PART OR UNDER MCL 400.734A. HOWEVER AN INDIVIDUAL WHO, AFTER ENACTMENT OF THIS ACT, COMMITS A DISQUALIFYING OFFENSE AS DEFINED IN SUBSECTION (1), SHALL NOT BE ELIGIBLE FOR EMPLOYMENT BASED SOLELY UPON HIS OR HER EMPLOYMENT IN
A COVERED HEALTH FACILITY PRIOR TO THE EFFECTIVE DATE OF
THIS ACT. SUCH AN INDIVIDUAL MAY APPLY FOR A CERTIFICATE
OF EMPLOYABILITY, AND IF THE HE OR SHE DOES SO, HIS OR HER
PRIOR WORK HISTORY SHALL BE TAKEN INTO CONSIDERATION.

(3) An individual who applies for employment either as an employee or as an
independent contractor or for clinical privileges with a health facility or agency
that is a nursing home, CERTIFIED HOME HEALTH AGENCY, HOSPICE,
PROVIDER OF SWING-BED SERVICES, PSYCHIATRIC HOSPITAL, ICF/MR
FACILITY, PERSONAL CARE AGENCY, HOME AND COMMUNITY-BASED
GROUP HOME UNDER 8 BEDS, county medical care facility, or home for the
aged and has received a good faith offer of employment, an independent
contract, or clinical privileges from the health facility or agency shall give written
consent at the time of application for the department of state police to conduct
a criminal history check under subsection S (4) or AND (5), or both, along with
identification acceptable to the department of state police. If the department of
state police has conducted a criminal history check on the applicant within the
24 months immediately preceding the date of application and the applicant
provides written consent for the release of information for the purposes of this
section, the health facility or agency may use a copy of the results of that
criminal history check instead of obtaining written consent and requesting a new
criminal history check under this subsection, and under subsections (4) and (5),
or both. If the applicant is using a prior criminal history check as described in
this subsection, the health facility or agency shall accept the copy of the results
of the criminal history check only from the health facility or agency or adult
foster care facility that previously employed or granted clinical privileges to the
applicant or from the firm or agency that independently contracts with the
applicant.

(4) Upon receipt of the written consent and identification required under
subsection (3), if an applicant has resided in this state for 3 or more years
preceding the RECEIVED A good faith offer of employment, an independent
contract, or clinical privileges, a health facility or agency that is a nursing home,
CERTIFIED HOME HEALTH AGENCY, HOSPICE, PROVIDER OF SWING-BED
SERVICES, PSYCHIATRIC HOSPITAL, ICF/MR FACILITY, PERSONAL CARE
AGENCY, HOME AND COMMUNITY-BASED GROUP HOME UNDER 8 BEDS,
county medical care facility, or home for the aged 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 AND TO THE RELEVANT LICENSING
OR REGULATORY DEPARTMENT TO PERFORM A CHECK OF ALL RELEVANT
REGISTRIES AS REQUIRED BY THEIR MEDICARE PRESCRIPTION DRUG,
IMPROVEMENT AND MODERNIZATION ACT OF 2003. The request shall be
made in a manner prescribed by the department of state police. The health
facility or agency shall make the written consent and identification available to
the department of state police. If there is a charge for conducting the criminal
history check, the health facility or agency requesting the criminal history check
shall pay the cost of the charge. The health facility or agency shall not seek
reimbursement for the charge from the individual who is the subject of the
criminal history check. 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 health facility or agency 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. As a condition of employment, an applicant shall
sign a written statement that he or she has been a resident of this state for 3 or
more years preceding the good faith offer of employment, independent contract,
or clinical privileges.

(5) Upon receipt of the written consent and identification required under
subsection (3), if an applicant has resided in this state for less than 3 years
preceding the good faith offer of employment, an independent contract, or
clinical privileges, a health facility or agency that is a nursing home, CERTIFIED
HOME HEALTH AGENCY, HOSPICE, PROVIDER OF SWING-BED SERVICES,
PSYCHIATRIC HOSPITAL, ICF/MR FACILITY PERSONAL CARE AGENCY,
HOME AND COMMUNITY-BASED GROUP HOME UNDER 8 BEDS, county
medical care facility, or home for the aged that has made a good faith offer
described in this subsection to the applicant shall comply with subsection (4)
and shall make a request to the department of state police 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. An applicant described in this subsection shall provide the
department of state police with 2 sets A SET of fingerprints. The department of
state police shall complete the criminal history check under subsection (4) and,
except as otherwise provided in this subsection, provide the results of its
determination under subsection (4) to the health facility or agency and the
results of the federal bureau of investigation determination to the department of
COMMUNITY HEALTH OR HUMAN SERVICES consumer and industry services
within 30 days after the request is made. If the requesting health facility or
agency is not a state department or agency and if a crime CRIMINAL
CONVICTION is disclosed on the federal bureau of investigation determination,
the department shall notify the health facility or agency AND THE APPLICANT
in writing of the type of crime disclosed on the federal bureau of investigation
determination without disclosing the details of the crime. THE NOTIFICATION
SHALL INFORM THE HEALTH FACILITY OR AGENCY AND THE APPLICANT
REGARDING THE APPEAL PROCESS SET OUT IN SECTION (11C) OF THIS
PART. Any charges for fingerprinting or a federal bureau of investigation
determination under this subsection shall be paid in the manner required under subsection (4).

(6) If a health facility or agency that is a nursing home, CERTIFIED HOME HEALTH AGENCY, HOSPICE, PROVIDER OF SWING-BED SERVICES, PSYCHIATRIC HOSPITAL, ICF/MR FACILITY PERSONAL CARE AGENCY, HOME AND COMMUNITY-BASED GROUP HOME UNDER 8 BEDS, county medical care facility, or home for the aged determines it necessary to employ or grant clinical privileges to an applicant before receiving the results of the applicant's criminal history check under subsection (4) or (5), or both, the health facility or agency may conditionally employ or grant conditional clinical privileges to the individual if all of the following apply:

(a) The health facility or agency requests the criminal history check under subsection (4) or (5), or both, 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, or any disqualifying information including substantiated findings that are described in subsection (1)(a) and (b) within the applicable time period prescribed by subsection (1)(a) and (b).

(ii) The individual agrees that, if the information in the criminal history check conducted under subsection (4) or (5), or both, does not confirm the individual's statement under subparagraph (i), his or her employment or clinical privileges will be terminated by the health facility or agency as required under subsection (1) unless and until the individual can prove that the information is incorrect. The health facility or agency shall provide a copy of the results of the criminal history check conducted under subsection (4) or (5), or both, to the applicant upon request.

(iii) That he or she understands the conditions described in subparagraphs (i) and (ii) that result in the termination of his or her employment or clinical privileges and that those conditions are good cause for termination.
(7) On the effective date of the amendatory act that added this section, the department shall develop and distribute a model form for the statement required under subsection (6)(b). The department shall make the model form available to health facilities or agencies subject to this section upon request at no charge.

(8) If an individual is employed as a conditional employee or is granted conditional clinical privileges under subsection (6), and the report described in subsection (4) or (5), or both, does not confirm the individual's statement under subsection (6)(b)(i), the health facility or agency shall terminate the individual's employment or clinical privileges as required by subsection (1).

(9) An individual who knowingly provides false information regarding criminal convictions on a statement described in subsection (6)(b)(i) is guilty of a misdemeanor punishable by imprisonment for not more than 930 days or a fine of not more than $1000, or both. AN INDIVIDUAL WHO KNOWINGLY USES OR DISSEMINATES THE CRIMINAL HISTORY INFORMATION OBTAINED UNDER THIS PART FOR ANY PURPOSE OTHER THAN THOSE SPECIFIED UNDER THIS PART SHALL BE GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN $1000, OR BOTH, AND SHALL ALSO BE LIABLE IN TORT FOR ACTUAL DAMAGES OR $1000, WHICHEVER IS GREATER.

(10a) A health facility or agency that is a nursing home, CERTIFIED HOME HEALTH AGENCY, HOSPICE, PROVIDER OF SWING-BED SERVICES PSYCHIATRIC HOSPITAL, ICF/MR FACILITY, PERSONAL CARE AGENCY, HOME AND COMMUNITY-BASED GROUP HOME UNDER 8 BEDS, county medical care facility, or home for the aged shall use criminal history record information obtained under subsection (4), (5), or (6) 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 (6) and (8). A health facility or agency or an employee of the health facility or agency shall not disclose criminal history record information obtained under subsection (4) or (5) to a person who is not directly involved in evaluating the applicant's qualifications for employment, an independent contract, or clinical privileges. WITH CONSENT OF THE APPLICANT Upon written request from another health facility or agency or adult foster care facility that is considering employing, independently contracting with, or granting clinical privileges to an individual, a health facility or agency that has obtained criminal history record information under this section on that individual shall share the information with the requesting health facility or agency or adult foster care facility. Except for a knowing or
intentional release of false information, a health facility or agency has no liability in connection with a criminal background check conducted under this section or the release of criminal history BACKGROUND CHECK record information under this subsection.

(11A) As a condition of continued employment, each employee, independent contractor, or individual granted clinical privileges shall agree in writing to report to the health facility or agency immediately upon being arrested for or convicted of 1 or more of the criminal offenses listed in subsection (1)(a) and (b).

(11B) THE ADDITION OF CERTIFIED HOME HEALTH AGENCY, HOSPICE, PROVIDER OF SWING-BED SERVICES, PSYCHIATRIC HOSPITAL, ICF/MR FACILITY, HOME AND COMMUNITY-BASED GROUP HOME UNDER 8 BEDS, AND PERSONAL CARE AGENCY TO THIS SECTION AND THE CHANGES IN SUBSECTIONS 4 AND 5 RELATED TO APPLICANTS WITH LESS THAN 3 YEARS RESIDENCE IN THE STATE, SHALL ONLY GO INTO EFFECT 60 DAYS FROM RECEIPT OF FEDERAL APPROVAL OF FEDERAL FUNDS TO PAY FOR A DETERMINATION OF ANY NATIONAL CRIMINAL HISTORY BY THE FEDERAL BUREAU OF INVESTIGATION AND THE DEPARTMENT HAS PUBLISHED A METHOD FOR THE PAYMENT OF THE DETERMINATIONS. FOR FACILITIES AND AGENCIES THAT FILE AN ANNUAL MEDICAID COST REPORT, THE COSTS OF THE FEDERAL BUREAU OF INVESTIGATION DETERMINATION WILL BE AN ADDITIONAL COST FULLY PAID OUTSIDE THE EXISTING PAYMENT METHODOLOGIES. FOR FACILITIES AND AGENCIES THAT DO NOT FILE AN ANNUAL COST REPORT, THE COSTS OF THE FEDERAL BUREAU OF INVESTIGATION DETERMINATIONS WILL BE PAID BY THE DEPARTMENT OF COMMUNITY HEALTH ON A DIRECT BASIS TO THE MICHIGAN STATE POLICE OR ITS DESIGNEE.

(11C) THE DEPARTMENT OF COMMUNITY HEALTH AND DEPARTMENT OF HUMAN SERVICES SHALL ESTABLISH AN EMPLOYMENT ELIGIBILITY APPEAL BOARD AND A PROCESS FOR APPLICANTS FOR EMPLOYMENT WHO HAVE BEEN DISQUALIFIED FROM EMPLOYMENT UNDER THIS PART. THE APPEAL
BOARD AND PROCESS SHALL BE CONSISTENT WITH THE FOLLOWING PROVISIONS.

"THE APPEAL PROCESS SHALL BE AVAILABLE TO (1) INDIVIDUALS WHO CLAIM THAT THE CRIMINAL BACKGROUND CHECK REPORT CONTAINS AN ERROR MATERIAL TO A DETERMINATION OF THEIR ELIGIBILITY FOR EMPLOYMENT; (2) INDIVIDUALS, UNLESS PRECLUDED BY FEDERAL LAW EITHER BY A CONVICTION OF A RELEVANT CRIME OR A SUBSTANTIATED FINDING OF PATIENT OR RESIDENT ABUSE, WHO SEEK TO DEMONSTRATE THROUGH PROOF OF REHABILITATION, COMMUNITY SERVICE, EMPLOYMENT, OR OTHER FACTORS, THAT THEY DO NOT PRESENT A DANGER TO PERSONS SERVED BY THE AFFECTED FACILITIES; (3) INDIVIDUALS WHOSE ELIGIBILITY FOR EMPLOYMENT UNDER THIS SECTION OR UNDER MCL 400.734A IS UNCLEAR, AND WHO SEEK CLARIFICATION REGARDING THEIR ELIGIBILITY; OR (4) INDIVIDUALS WHO SEEK CLARIFICATION ABOUT WHETHER A PARTICULAR POSITION IS COVERED UNDER THE STATUTE. APPLICATIONS MAY BE MADE BY PROSPECTIVE EMPLOYEES, OR BY EMPLOYERS ON THEIR BEHALF. AN INDIVIDUAL WHO IS DENIED A CERTIFICATE OF EMPLOYABILITY AFTER APPLYING UNDER SUBSECTION (2) MAY NOT APPLY FOR ANOTHER CERTIFICATE OF EMPLOYABILITY UNDER SUBSECTION (2) UNTIL AT LEAST ONE YEAR HAS PASSED FROM THE DATE OF THE PRIOR APPLICATION."

(a) THE DEPARTMENT OF COMMUNITY HEALTH AND THE DEPARTMENT OF HUMAN SERVICES MAY, THROUGH ADMINISTRATIVE RULES, CREATE AN EXPEDITED DEPARTMENTAL ADMINISTRATIVE REVIEW PROCESS FOR THOSE NONVIOLENT FELONIES AND MISDEMEANORS THAT DO NOT CREATE A REASONABLE THREAT TO INDIVIDUALS SERVED BY THE AFFECTED FACILITIES.

(b) THE APPEAL BOARD SHALL CONSIST OF TWO MEMBERS EACH OF THE SENIOR LICENSING AND REGULATION STAFF OF THE DEPARTMENTS OF COMMUNITY HEALTH AND HUMAN SERVICES; TWO PUBLIC MEMBERS APPOINTED BY THE GOVERNOR; ONE PROVIDER MEMBER APPOINTED BY THE GOVERNOR; ONE MEMBER OF ORGANIZED LABOR APPOINTED BY THE GOVERNOR; AND ONE CONSUMER OF LONG-TERM HEALTHCARE SERVICES APPOINTED BY THE GOVERNOR.
a. THE APPEAL BOARD SHALL, TO THE EXTENT REASONABLY POSSIBLE, HEAR AND DECIDE ALL APPLICATIONS FOR APPEAL WITHIN SIXTY DAYS OF RECEIPT OF A COMPLETED INVESTIGATION AND RECORD.

b. THE APPEAL BOARD MAY DECIDE, IF IT FINDS UPON A CLEAR AND CONVINCING EVIDENCE, TO ISSUE A CERTIFICATE OF EMPLOYABILITY AND MAY ATTACH ANY CONDITIONS IT DEEMS NECESSARY TO ENSURE THE HEALTH SAFETY OF THE INDIVIDUALS SERVED BY THE EMPLOYER'S FACILITY OR PROGRAM.

c. THE APPEAL BOARD SHALL HEAR ALL APPLICATIONS FOR APPEAL NOT ELIGIBLE FOR INTERNAL DEPARTMENTAL ADMINISTRATIVE REVIEW. THEY MAY, IN THEIR SOLE DESCRETION, ALSO AGREE TO HEAR APPEALS FROM ADVERSE DEPARTMENTAL ADMINISTRATIVE REVIEW PROCESS DECISIONS.

d. THE NON-STATE EMPLOYEE BOARD MEMBERS SHALL RECEIVE MEETING EXPENSES AND COMPENSATION AS ANNUALLY APPROPRIATED BY THE LEGISLATURE.

e. THE FINAL DECISIONS OF THE APPEAL BOARD ARE SUBJECT TO THE ADMINISTRATIVE PROCEDURES ACT. ANY FINAL DECISIONS TAKEN PURSUANT TO THE EXPEDITED DEPARTMENTAL ADMINISTRATIVE REVIEW PROCESS WHICH THE APPEAL BOARD DECLINES TO REVIEW ARE ALSO SUBJECT TO THE ADMINISTRATIVE PROCEDURES ACT.

THE APPEAL BOARD MAY ISSUE A CERTIFICATE OF EMPLOYABILITY IF (1) IT FINDS THAT THE CRIMINAL BACKGROUND CHECK CONTAINS AN ERROR AND THAT THE INDIVIDUAL IS ELIGIBLE FOR EMPLOYMENT; 2) THE APPLICANT, BY CLEAR AND CONVINCING EVIDENCE, DEMONSTRATES PROOF OF REHABILITATION THROUGH COMMUNITY SERVICE, EMPLOYMENT, OR OTHER SIMILAR FACTORS, THAT THE APPLICANT DOES
NOT PRESENT A DANGER TO PERSONS SERVED BY THE AFFECTED FACILITIES; 3) THE APPLICANT’S OFFENSE IS NOT A DISQUALIFYING OFFENSE UNDER THIS PART OR UNDER MCL 400.734A; 4) THE APPLICANT WOULD NOT BE IN A POSITION WHERE THE APPLICANT WOULD REGULARLY HAVE DIRECT CONTACT WITH OR PROVIDE DIRECT SERVICES TO PATIENTS OR RESIDENTS.

(c) THE APPEAL PROCESS SHALL NOT BE AVAILABLE FOR FELONIES INVOLVING ABUSE, NEGLECT, ASSAULT, BATTERY, OR CRIMINAL SEXUAL CONDUCT OR INVOLVING FRAUD OR THEFT AGAINST A VULNERABLE ADULT AS THAT TERM IS DEFINED IN SECTION 145M OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.145M, OR A STATE OR FEDERAL CRIME THAT IS SUBSTANTIALLY SIMILAR TO A FELONY DESCRIBED IN THIS SUBDIVISION UNTIL AT LEAST THIRTY-SIX MONTHS FROM THE COMPLETION OF ALL SENTENCING REQUIREMENTS INCLUDING PROBATION, PAROLE, AND RESTITUTION.

(d) A CERTIFICATE OF EMPLOYABILITY ISSUED BY THE APPEAL BOARD OR THROUGH THE EXPEDITED REVIEW PROCESS SHALL ENABLE THE HOLDER OF THAT CERTIFICATE TO WORK IN ANY FACILITY COVERED UNDER MCL 333.20173 OR UNDER 400.734A.

(d2) THE DEPARTMENT MAY CHARGE A FEE TO COVER THE COSTS OF THE APPEAL BOARD PROCESS NOT TO EXCEED $25.00 DOLLARS PER APPLICATION.

(e) THE DEPARTMENT SHALL PROMULGATE ADMINISTRATIVE RULES TO IMPLEMENT THIS PART.
(f) THIS PART SHALL NOT TAKE EFFECT UNLESS _____ IS ENACTED INTO LAW.

(G) THE DEPARTMENT OF COMMUNITY HEALTH AND THE DEPARTMENT OF HUMAN SERVICES SHALL STUDY THE EFFECT CRIMINAL BACKGROUND CHECKS WOULD HAVE ON VOLUNTEERS AND STATE AGENCY EMPLOYEES, AND THE POTENTIAL FOR ABUSE IN COVERED HEALTH FACILITIES AND REPORT BACK TO THE LEGISLATURE ONE YEAR AFTER THE EFFECTIVE DATE OF THIS ACT.

(H) A RECIPIENT OF MEDICAID HOME HELP SERVICES MAY REQUEST AND BE REIMBURSED FOR A BACKGROUND CHECK TO BE PERFORMED ON A HOME HEALTH PROVIDER WHO HAS RECEIVED A GOOD FAITH OFFER OF EMPLOYMENT.

(I) A HEALTH FACILITY OR PROSPECTIVE EMPLOYEE COVERED UNDER THIS ACT MAY NOT BE CHARGED FOR THE COST OF A BACKGROUND CHECK REQUIRED UNDER THIS ACT.

(12) 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) “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.

(C) “DIRECT ACCESS” MEANS ACCESS TO THE INDIVIDUAL OR THE PROPERTY OF A PATIENT, RESIDENT, OR CONSUMER OF A LONG-TERM CARE FACILITY OR AGENCY THROUGH EMPLOYMENT OR THROUGH A CONTRACT WITH SUCH A FACILITY OR PROVIDER.
(D) “CERTIFIED HOME HEALTH AGENCY” MEANS A HEALTH CARE ORGANIZATION AUTHORIZED TO PARTICIPATE IN THE FEDERAL MEDICARE PROGRAM AS OUTLINED IN 42 USC 1395BBB AND 42 CFR 484 AND DOING BUSINESS IN MICHIGAN.

(13) THIS ACT SHALL BECOME EFFECTIVE ON ___________________________
400.734a Adult foster care facility; employment of individual providing direct services; criminal history check.

Sec. 34a.

(1) In addition to the restrictions prescribed in sections 13, 22, and 31, and except as otherwise provided in subsection (2), an adult foster care facility shall not employ or independently contract with an individual who HAS DIRECT ACCESS OR regularly provides direct services to residents of the adult foster care facility after the effective date of the amendatory act that added this section if the individual has been convicted of OR FOUND PURSUANT SECTION (b) TO HAVE 1 or more of the following:

(a) A RELEVANT CRIME AS DESCRIBED IN SECTION 1128(a) OF THE UNITED STATES SOCIAL SECURITY ACT.

(b) A SUBSTANTIATED FINDING BY A STATE AGENCY UNDER SECTION 1819(G)(1)(C) OR 1919(G)(1)(C) OF THE SOCIAL SECURITY ACT

(c) A felony or an attempt or conspiracy to commit a felony, OTHER THAN A RELEVANT CRIME DESCRIBED IN SECTION 1128(A) OF THE UNITED STATES SOCIAL SECURITY ACT, within the 15 years, UNLESS 15 YEARS HAS ELAPSED SINCE COMPLETION OF ALL TERMS AND CONDITIONS OF SENTENCING AND REQUIREMENTS OF PAROLE immediately preceding PRIOR TO the date of application for employment OR CLINICAL PRIVILEGES or the date of the execution of the independent contract.

(d) A misdemeanor, OTHER THAN A RELEVANT CRIME DESCRIBED IN SECTION 1128(A) OF THE UNITED STATES SOCIAL SECURITY ACT, involving abuse, neglect, assault, battery, or criminal sexual conduct or involving fraud or theft against a vulnerable adult as that term is defined in section 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m, or a state or federal crime that is substantially similar to a misdemeanor described in this subdivision within the 10 years immediately preceding the date of application for employment or the date of the execution of the contract.

(e) An offense listed under R 400.1152 of the Michigan administrative code.
(2) Except as otherwise provided in this subsection and subsection (7), an adult foster care facility shall not employ or independently contract with an individual who has direct access regularly provides direct services to residents after the effective date of the amending act that added this section until the adult foster care facility complies with subsection (4), (5), or (6). This subsection and subsection (1) do not apply to an individual who is employed by or under contract to an adult foster care facility before the effective date of the amending act that added this subsection.

(2A) SUBSECTIONS (1) AND (2) DO NOT APPLY TO

(3) INDIVIDUALS WHO ARE INDEPENDENT CONTRACTORS WITH THE FACILITIES OR AGENCIES COVERED BY THIS SECTION WHERE THE CONTRACTUAL WORK PERFORMED BY THOSE INDIVIDUALS IS NOT DIRECTLY RELATED TO THE CLINICAL, HEALTHCARE, OR PERSONAL CARE SERVICES DELIVERED BY THE FACILITY OR AGENCY; OR WHOSE DUTIES ARE NOT PERFORMED ON AN ONGOING BASIS WITH DIRECT ACCESS TO PATIENTS. THIS EXCEPTION INCLUDES, BUT IS NOT LIMITED TO, INDEPENDENT CONTRACTORS WHO PROVIDE UTILITIES, MAINTENANCE, CONSTRUCTION, OR COMMUNICATION SERVICES.

(4) INDIVIDUALS WHO ARE EMPLOYED BY, UNDER INDEPENDENT CONTRACT TO, OR GRANTED CLINICAL PRIVILEGES IN A HEALTH FACILITY OR AGENCY COVERED BY THIS SECTION OR BY MCL 400.734A BEFORE THE EFFECTIVE DATE OF THIS ACT, AS SET OUT IN SECTION (13). INDIVIDUALS WHO ARE EXEMPTED UNDER FACILITIES OR AGENCIES FOR WHOM THEY WORKED PRIOR TO THE ENACTMENT OF THIS ACT, BUT ARE ELIGIBLE FOR EMPLOYMENT WITH ANY OTHER FACILITY UNDER THIS SUBSECTION ARE NOT LIMITED TO EMPLOYMENT WITH THE HEALTH FACILITY OR AGENCY COVERED UNDER THIS PART OR UNDER MCL 400.734A. HOWEVER AN INDIVIDUAL WHO, AFTER ENACTMENT OF THIS ACT, COMMITS A DISQUALIFYING OFFENSE AS DEFINED IN SUBSECTION (1), SHALL NOT BE ELIGIBLE FOR EMPLOYMENT BASED SOLELY UPON HIS OR HER EMPLOYMENT IN A COVERED HEALTH FACILITY PRIOR TO THE EFFECTIVE DATE OF THIS ACT. SUCH AN INDIVIDUAL MAY APPLY FOR A CERTIFICATE OF EMPLOYABILITY, AND IF THE HE OR SHE DOES SO, HIS OR HER PRIOR WORK HISTORY SHALL BE TAKEN INTO CONSIDERATION.

(3) An individual who applies for employment either as an employee or as an independent contractor with an adult foster care facility and has received a good faith offer of employment or independent contract from the adult foster care facility 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 department of state police or equivalent state agency under subsection (6) has conducted a criminal history check on the individual within the 24 months immediately preceding the date of application and the individual provides written consent for release of information for the purposes of this section, the adult foster care facility may use a copy of that criminal history check instead of obtaining written consent and requesting a new criminal history check under this section. If the department of state police or equivalent state agency under subsection (6) has conducted a criminal history check on the individual within the 24 months immediately preceding the date of application and the individual provides written consent for release of information for the purposes of this section, the adult foster care facility may use a copy of that criminal history check in instead of obtaining written consent and requesting a new criminal history check under this section. If the individual is using a prior criminal history check as described in this subsection, the adult foster care facility shall accept the copy of the results of the criminal history check only from the adult foster care facility or health facility or agency that previously employed or independently contracted with the individual.

(4) Upon receipt of the written consent and identification required under subsection (3), if the individual has resided in this state for 3 or more years preceding the good faith offer of employment or independent contract, the adult foster care facility that has made a good faith offer of employment or independent contract shall make a request to the department of state police to conduct a criminal history check on the individual AND TO THE RELEVANT LICENSING OR REGULATORY DEPARTMENT OR AGENCY TO PERFORM A CHECK OF ALL RELEVANT REGISTRIES AS REQUIRED BY SECTION 307 of THE MEDICARE PRESCRIPTION DRUG, IMPROVEMENT AND MODERNIZATION ACT OF 2003. The request shall be made in a manner prescribed by the department of state police AND THE RELEVANT LICENSING OR REGULATORY DEPARTMENT OR AGENCY. The adult foster care facility shall make the written consent and identification available to the department of state police. If there is a charge for conducting the criminal history check, the adult foster care facility requesting the criminal history check shall pay the cost of the charge. The adult foster care facility shall not seek reimbursement for the charge from the individual who is the subject of the criminal history check. The department of state police shall conduct a criminal history check on the individual named in the request. The department of state police shall provide the adult foster care facility with a written report of the criminal history check. The report shall contain any criminal history record information on the individual maintained by the department of state police. As a condition of employment, an individual shall sign a written statement that he or she has been a resident of this state for 3 or more years preceding the good faith offer of employment or independent contract.

(5) Upon receipt of the written consent and identification required under subsection (3), if the individual has applied for employment either as an employee or as an independent contractor with an adult foster care facility
licenced for more than 6 persons and has resided in this state for less than 3 years preceding the good faith offer of employment or independent contract, the adult foster care facility that has made a good faith offer of employment or independent contract shall comply with subsection (4) and shall make a request to the department of state police to forward the individual'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 individual. An individual described in this subsection shall provide the department of state police with 2 sets A SET of fingerprints. The department of state police shall complete the criminal history check under subsection (4) and, except as otherwise provided in this subsection, provide the results of its determination under subsection (4) to the adult foster care facility AND THE APPLICANT and the results of the federal bureau of investigation determination to the department of consumer and industry HUMAN services within 30 days after the request is made. If the requesting adult foster care facility is not a state department or agency and if a crime CRIMINAL CONVICTION is disclosed on the federal bureau of investigation determination, the department shall notify the adult foster care facility AND THE APPLICANT in writing of the type of crime disclosed on the federal bureau of investigation determination without disclosing the details of the crime. THE NOTIFICATION SHALL INFORM THE HEALTH FACILITY OR AGENCY AND THE APPLICANT REGARDING THE APPEAL PROCESS SET OUT IN __________ The charges for fingerprinting or a federal bureau of investigation determination under this subsection shall be paid in the manner required under subsection (4).

(6) Upon receipt of the written consent and identification required under subsection (3), if the individual has applied for employment either as an employee or as an independent contractor with an adult foster care facility licensed for 6 persons or less and has resided in this state for less than 3 years preceding the good faith offer of employment or independent contract, the adult foster care facility that has made the good faith offer of employment or independent contract shall comply with subsection (4) and shall make a request to the department of state police or state agency responsible for maintaining statewide criminal history information of all the states in which the individual resided during the preceding 5 years to conduct a criminal history check on the individual.

(7) If an adult foster care facility determines it necessary to employ or independently contract with an individual before receiving the results of the individual's criminal history check required under this section, the adult foster care facility may conditionally employ the individual if both of the following apply:
(a) The adult foster care facility requests the criminal history check required under this section, upon conditionally employing the individual.

(b) The individual signs a written statement indicating all of the following:

(i) That he or she has not been convicted of 1 or more of the crimes, or any disqualifying information including substantiated findings that are described in subsection (1)(a) and (b) within the applicable time period prescribed by subsection (1)(a) and (b).

(ii) The individual agrees that, if the information in the criminal history check conducted under this section does not confirm the individual's statement under subparagraph (i), his or her employment will be terminated by the adult foster care facility as required under subsection (1) unless and until the individual can prove that the information is incorrect. The adult foster care facility shall provide a copy of the results of the criminal history check conducted under this section, to the individual upon request.

(iii) That he or she understands the conditions described in subparagraphs (i) and (ii) that result in the termination of his or her employment and that those conditions are good cause for termination.

(8) On the effective date of the amendatory act that added this subsection, the department of consumer and industry human services shall develop and distribute a model form for the statement required under subsection (7)(b). The department of consumer and industry human services shall make the model form available to adult foster care facilities upon request at no charge.

(9) If an individual is conditionally employed under subsection (7), and the report described in subsection (4), (5), or (6), if applicable, does not confirm the individual's statement under subsection (7)(b)(i), the adult foster care facility shall terminate the individual's employment as required by subsection (1).

(10) An individual who knowingly provides false information regarding a criminal conviction on a statement described in subsection (7)(b)(i) is guilty of a misdemeanor punishable by imprisonment for not more than 930 days or a fine of not more than $500.00, or both. AN INDIVIDUAL WHO KNOWINGLY USES OR DISSEMINATES THE CRIMINAL HISTORY INFORMATION OBTAINED
UNDER THIS PART FOR ANY PURPOSE OTHER THAN THOSE SPECIFIED UNDER THIS PART SHALL BE GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN $1000, OR BOTH, AND SHALL ALSO BE LIABLE IN TORT FOR ACTUAL DAMAGES OR $1000, WHICHEVER IS GREATER.

(11) An adult foster care facility shall use criminal history record information obtained under subsection (4), (5), or (6) only for the purpose of evaluating an individual's qualifications for employment in the position for which he or she has applied and for the purposes of subsections (7) and (9). An adult foster care facility or an employee of the adult foster care facility shall not disclose criminal history record information obtained under this section to a person who is not directly involved in evaluating the individual's qualifications for employment or independent contract. WITH THE CONSENT OF THE APPLICANT Upon written request from another adult foster care facility or health facility or agency that is considering employing or independently contracting with an individual, an adult foster care facility that has obtained criminal history record information under this section on that individual shall share the information with the requesting adult foster care facility or health facility or agency. Except for a knowing or intentional release of false information, an adult foster care facility has no liability in connection with a background check conducted under this section or the release of criminal history record information under this subsection EXCEPT THE PENALTIES DESCRIBED IN SUBSECTION (9) OR FOR A KNOWING OR INTENTIONAL RELEASE OF FALSE INFORMATION, A HEALTH FACILITY OR AGENCY 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.

(11b) THE REQUIREMENT FOR A FEDERAL BUREAU OF INVESTIGATION DETERMINATION OF NATIONAL CRIMINAL HISTORY OF ALL SETS OF FINGERPRINTS SHALL ONLY GO INTO EFFECT 60 DAYS FROM RECEIPT OF FEDERAL APPROVAL OF FEDERAL FUNDS TO PAY FOR THE FEDERAL DETERMINATIONS AND THE DEPARTMENT OF COMMUNITY HEALTH HAS IMPLEMENTED A METHOD TO PAY FOR THE FEDERAL BUREAU OF INVESTIGATION DETERMINATIONS ON A DIRECT BASIS TO THE MICHIGAN STATE POLICE OR ITS DESIGNEE.

(12A) As a condition of continued employment, each employee or independent contractor shall agree in writing to report to the adult foster care facility immediately upon being arrested for or convicted of 1 or more of the criminal offenses listed in subsection (1)(a) and (b).
(12B) ALL APPLICANTS WHO HAVE BEEN DISQUALIFIED FROM EMPLOYMENT UNDER THIS PART ARE ELIGIBLE TO APPEAL TO THE EMPLOYMENT ELIGIBILITY APPEAL BOARD DESCRIBED IN 333.20173-11C

(12C) THE APPEAL PROCESS SHALL BE AVAILABLE TO (1) INDIVIDUALS WHO CLAIM THAT THE CRIMINAL BACKGROUND CHECK REPORT CONTAINS AN ERROR MATERIAL TO A DETERMINATION OF THEIR ELIGIBILITY FOR EMPLOYMENT; (2) INDIVIDUALS, UNLESS PRECLUDED BY FEDERAL LAW, WHO SEEK TO DEMONSTRATE THROUGH PROOF OF REHABILITATION, COMMUNITY SERVICE, EMPLOYMENT, OR OTHER FACTORS, THAT THEY DO NOT PRESENT A DANGER TO PERSONS SERVED BY THE AFFECTED FACILITIES; (3) INDIVIDUALS WHOSE ELIGIBILITY FOR EMPLOYMENT UNDER THIS SECTION OR UNDER MCL 400.734A IS UNCLEAR, AND WHO SEEK CLARIFICATION REGARDING THEIR ELIGIBILITY; OR (4) INDIVIDUALS WHO SEEK CLARIFICATION ABOUT WHETHER A PARTICULAR POSITION IS COVERED UNDER THE STATUTE. APPLICATIONS MAY BE MADE BY PROSPECTIVE EMPLOYEES, OR BY EMPLOYERS ON THEIR BEHALF. AN INDIVIDUAL WHO IS DENIED A CERTIFICATE OF EMPLOYABILITY AFTER APPLYING UNDER SUBSECTION (2) MAY NOT APPLY FOR ANOTHER CERTIFICATE OF EMPLOYABILITY UNDER SUBSECTION (2) UNTIL AT LEAST ONE YEAR HAS PASSED FROM THE DATE OF THE PRIOR APPLICATION."

(12D) THE DEPARTMENT MAY, THROUGH ADMINISTRATIVE RULES, CREATE AN EXPEDITED DEPARTMENTAL ADMINISTRATIVE REVIEW PROCESS FOR THOSE NONVIOLENT FELONIES AND MISDEMEANORS THAT DO NOT CREATE A REASONABLE THREAT TO INDIVIDUALS SERVED BY THE AFFECTED FACILITIES.

(12E) THE DEPARTMENT OF COMMUNITY HEALTH SHALL, SUBJECT TO FEDERAL TITLE XIX APPROVAL, RECOGNIZE THE COSTS OF THE BACKGROUND CHECKS REQUIRED UNDER THIS SECTION AS REIMBURSABLE UNDER THE MEDICAID PROGRAM FOR ADULT FOSTER CARE FACILITIES.

(12F) THE DEPARTMENT OF HUMAN SERVICES SHALL STUDY THE EFFECT CRIMINAL BACKGROUND CHECKS WOULD HAVE ON VOLUNTEERS AND STATE AGENCY EMPLOYEES, AND THE POTENTIAL FOR ABUSE IN ADULT FOSTER CARE FACILITIES AND REPORT BACK TO THE LEGISLATURE ONE YEAR AFTER THE EFFECTIVE DATE OF THIS ACT.

(12G) AN ADULT FOSTER CARE FACILITY OR PROSPECTIVE EMPLOYEE COVERED UNDER THIS ACT MAY NOT BE CHARGED FOR THE COST OF A BACKGROUND CHECK REQUIRED UNDER THIS ACT.

(13) As used in this section:
(a) “Health facility or agency” means a health facility or agency as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

(b) “Independent contract” means a contract entered into by an adult foster care facility with an individual who provides the contracted services independently or a contract entered into by an adult foster care facility 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 adult foster care facility on behalf of the organization or agency.

(B) “DIRECT ACCESS” MEANS ACCESS TO THE INDIVIDUAL OR THE PROPERTY OF A PATIENT, RESIDENT, OR CONSUMER OF A LONG-TERM CARE FACILITY OR AGENCY THROUGH EMPLOYMENT OR THROUGH A CONTRACT WITH SUCH A FACILITY OR PROVIDER.

HEALTH PROFESSIONS (CHANGES)

333.16174 License or registration; permitted acts by board or task force; sanctions; disclosure.

Sec. 16174. (1) An individual who is licensed or registered under this article shall meet all of the following requirements:

(a) Be 18 or more years of age.
(b) Be of good moral character.
(c) Have a specific education or experience in the health profession or in a health profession subfield or health profession specialty field of the health profession, or training equivalent, or both, as prescribed by this article or rules of a board necessary to promote safe and competent practice and informed consumer choice.
(d) Have a working knowledge of the English language as determined in accordance with minimum standards established for that purpose by the department.

(E) EFFECTIVE JANUARY 1, 2006, THE DEPARTMENT SHALL REQUIRE A CRIMINAL BACKGROUND INVESTIGATION OF ALL PERSONS APPLYING FOR LICENSURE OR REGISTRATION AT THE TIME OF INITIAL APPLICATION, AND AT OTHER TIMES AT THE REQUEST OF THE DEPARTMENT FOR GOOD CAUSE SHOWN, BY MEANS OF A FINGERPRINT OR LIVESCAN CHECK BY THE MICHIGAN STATE POLICE AND FEDERAL BUREAU OF INVESTIGATION.

(i) ALL COSTS ASSOCIATED WITH THE BACKGROUND CHECK AND OBTAINING AND PROCESSING THE FINGERTIPS ARE THE RESPONSIBILITY OF THE LICENSEE, REGISTRANT OR APPLICANT.

(ii) THE DEPARTMENT MAY APPORTION THE COST OF BUILDING THE STATE OF MICHIGAN BACKGROUND CHECK SYSTEM AMONG ALL LICENSEES.

(iii) ANY AND ALL STATE OR NATIONAL CRIMINAL HISTORY RECORD INFORMATION OBTAINED BY THE DEPARTMENT FROM THE STATE POLICE OR THE FBI WHICH IS NOT ALREADY A MATTER OF PUBLIC RECORD SHALL BE DEEMED NONPUBLIC AND CONFIDENTIAL INFORMATION RESTRICTED TO THE EXCLUSIVE USE OF THE DEPARTMENT, BOARD, ITS MEMBERS, OFFICERS, INVESTIGATORS, AGENTS, AND ATTORNEYS IN EVALUATING THE APPLICANT'S ELIGIBILITY OR DISQUALIFICATION FOR LICENSURE. NO SUCH INFORMATION OR RECORDS RELATED THERETO SHALL, EXCEPT WITH WRITTEN CONSENT OF THE APPLICANT OR BY ORDER OF A COURT OF COMPETENT JURISDICTION, BE RELEASED OR OTHERWISE DISCLOSED BY THE DEPARTMENT TO ANY OTHER PERSON OR AGENCY.

(F) Pay the appropriate fees as prescribed in this article
333.16245 Reinstatement of limited, suspended, or revoked license or registration; application; payment; time; CRIMINAL BACKGROUND CHECK; hearing; guidelines; fees.

Sec. 16245 (1) An individual....
(2) An individual.....
    (a) AN INDIVIDUAL WHOSE REGISTRATION IS LIMITED, SUSPENDED OR REVOKED SHALL BE ASKED TO COMPLETE A CRIMINAL BACKGROUND CHECK AS DESCRIBED IN SECTION 16174 (1)(E) AS PART OF THE APPLICATION FOR REINSTATEMENT PROCESS.

(3) A board or task force.....
Michigan Program for Background Checks

Certified letter of clean record

Fingerprint Vendor
Livescan fingerprints transmitted to MSP

MSP Matches
State & Federal response

State Licensing Agency
Dept. Community Health
Dept. Human Services

ACRONYMS
ICHAT = Internet Criminal History Tool
CNA = Certified Nurse Aide Registry
SOR = Sex Offender Record
CHR = Criminal History Record
AFIS = Automated Fingerprint Identification System
IAFIS = Integrated Automated Fingerprint Identification System
HIPDB = Healthcare Integrity Data Bank
ATTACHMENT 3
Application for AFC/HFA Conditional Employment or Independent Contract
( Clinical Privileges for HFA Only)
Pending Criminal History Check

This form has been approved by the Michigan Department of Human Services for use by a home for the aged or an adult foster care home when it determines it is necessary to employ or independently contract with, or for HFA only grant clinical privileges to an individual, who provides direct services to residents, before receiving the results of the applicant’s criminal history check as required by Section 333.20173 or 400.734a of the Michigan Compiled Laws. A home for the aged or an adult foster care home may use this model form or create its own form that meets the minimum statutory requirements.

Applicant Statement Regarding Criminal History

1. Name of Facility: ____________________________________________

2. Name of Applicant: __________________________________________

3. Application for (Check One):

___ Employment
___ Independent Contractor
___ Granted Clinical Privileges (HFA only)

4. Statement Regarding Criminal History

I hereby state that I have not been convicted of any of the following:

(a) A felony or an attempt or conspiracy to commit a felony within the 15 years immediately preceding the date of this application for employment, independent contract, or clinical privileges (HFA only);

(b) A misdemeanor involving abuse, neglect, assault, battery, or criminal sexual conduct or involving fraud or theft against a vulnerable adult as that term is defined in section 145m of the Michigan Penal Code, 1931 PA 328, MCL 750.145m ¹, or a state or federal crime that is substantially similar to a misdemeanor described in this statement within the 10 years immediately

¹ MCL Section 750.145m defines “vulnerable adult” as 1 or more of the following: (i) An individual age 18 or over who, because of age, developmental disability, mental illness, or physical disability requires supervision or personal care or lacks the personal and social skills required to live independently; or (ii) A person 18 years of age or older or a person who is placed in an adult foster care family home or an adult foster care small group home; or (iii) A vulnerable person not less than 18 years of age who is suspected of being or believed to be abused, neglected, or exploited.
preceding the date of this application for employment, independent contract, or clinical privileges (HFA only).
5. Understandings and Agreements

In consideration of this conditional employment, I hereby understand and agree that, if the criminal history check conducted under Public Health Code Section 20173 or the Adult Foster Care Facility Licensing Act Section 34a does not confirm these statements, my employment, independent contract, or clinical privileges (HFA only) will be terminated by the facility as required by Section 20173(1) of the Public Health Code or Sec 34a(1) of the Adult Foster Care Facility Licensing Act unless and until I can prove that the information is incorrect. The facility shall provide a copy of the results of the criminal history check conducted under Section 20173 or Section 34a to me upon request.

I also understand and agree that failure to meet any conditions described in subparagraphs 4(a) and 4(b) of this statement may result in the termination of my employment, independent contract, or clinical privileges (HFA only), and that those conditions are good cause for termination.

I further understand that an individual who knowingly provides false information regarding criminal convictions on this statement is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both. (MCL 333.20173(9) or MCL 400.734a(10))

In addition, as a condition of continued employment, independent contract, or clinical privileges, I agree that I will report to the home for the aged/adult foster care home, immediately upon being arrested for or convicted of 1 or more of the criminal offenses listed in either subparagraph 4(a) or 4(b) of this statement.

________________________________________________________________________
Name of Applicant (Print or Type)

________________________________________________________________________
Signature of Applicant

________________________________________________________________________
Date
Application for Conditional Employment or Conditional Clinical Privileges Pending Criminal History Check

A health facility or agency may use this model form or create its own form that meets the minimum statutory requirements of Section 333.20173 of the Michigan Compiled Laws.

Applicant Statement Regarding Criminal History Pending Criminal History Check

11. Name of Facility:
12. Name of Applicant:
13. Application for (Check One):
   ____ Employment
   ____ Independent Contractor
   ____ Clinical Privileges

14. Statement Regarding Criminal History

I hereby state that I have not been convicted of any of the following:
   1(a) A felony or an attempt or conspiracy to commit a felony within the 15 years immediately preceding the date of this application for employment or clinical privileges;
   2(b) A misdemeanor involving abuse, neglect, assault, battery, or criminal sexual conduct or involving fraud or theft against a vulnerable adult as that term is defined in section 145m of the Michigan Penal Code, 1931 PA 328, MCL 750.145m, or a state or federal crime that is substantially similar to a misdemeanor described in this statement within the 10 years immediately preceding the date of this application for employment or clinical privileges. \(^2\)

Application for Conditional Employment Or Conditional Clinical Privileges Pending Criminal History Check

Page Two

5. Understandings and Agreements

In consideration of this conditional employment or these conditional clinical privileges, I hereby understand and agree that, if the criminal history check conducted under Public Health Code Section 20173 does not confirm these statements, my employment or clinical privileges will be terminated by the facility as required by Section 20173(1) of that Code unless and until I can prove that the information is incorrect. The facility shall provide a copy of the

\(^2\) MCL Section 750.145m defines “vulnerable adult” as 1 or more of the following: (i) An individual age 18 or over who, because of age, developmental disability, mental illness, or physical disability requires supervision or personal care or lacks the personal and social skills required to live independently: or (ii) A person 18 years of age or older or a person who is placed in an adult foster care family home or an adult foster care small group home; or (iii) A vulnerable person not less than 18 years of age who is suspected of being or believed to be abused, neglected, or exploited.

\(^3\) A health facility or agency may not employ an individual found guilty of abusing, neglecting, or mistreating residents by a court of law or an individual that had a finding entered into the State nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of resident property — regardless of the date of conviction or entry of findings in the nurse aide
results of the criminal history check conducted under Section 20173 to me upon written request.
I also understand and agree that failure to meet any conditions described in subparagraphs 4(a) and 4(b) of this statement may result in the termination of my employment or clinical privileges and that those conditions are good cause for termination.
I further understand that an individual who knowingly provides false information regarding criminal convictions in this statement is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both. (MCL 333.20173(9))

Name of Applicant (Print or Type) ________________________________

Signature of Applicant ________________________________

Date _____________
AUTHORIZATION for FINGERPRINT- BASED BACKGROUND CHECK & Application for AFC/HFA Conditional Employment or Independent Contract (Clinical Privileges for HFA Only)

This form has been approved by the Michigan Department of Human Services for use by a home for the aged or an adult foster care home when it determines it is necessary to employ or independently contract with, or for HFA only grant clinical privileges to an individual, who provides direct services to residents, before receiving the results of the applicant’s criminal history check as required by Section 333.20173 or 400.734a of the Michigan Compiled Laws. A home for the aged or an adult foster care home may use this model form or create its own form that meets the minimum statutory requirements.

1. Name of Facility: __________________________________________________________

2. Name of Applicant: ______________________________________________________

3. Application for (Check One):
   
   ___ Employment
   ___ Independent Contractor
   ___ Granted Clinical Privileges (HFA only)

4. Statement Regarding Criminal History

   I hereby state that I have not been convicted of any of the following:

   (a) A felony or an attempt or conspiracy to commit a felony within the 15 years immediately preceding the date of this application for employment, independent contract, or clinical privileges (HFA only);

   (b) A misdemeanor involving abuse, neglect, assault, battery, or criminal sexual conduct or involving fraud or theft against a vulnerable adult as that term is defined in section 145m of the Michigan Penal Code, 1931 PA 328, MCL 750.145m, or a state or federal crime that is substantially similar to a misdemeanor described in this statement within the 10 years immediately preceding the date of this application for employment, independent contract, or clinical privileges (HFA only).

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4 MCL Section 750.145m defines “vulnerable adult” as 1 or more of the following: (i) An individual age 18 or older who, because of age, developmental disability, mental illness, or physical disability requires supervision or personal care or lacks the personal and social skills required to live independently; or (ii) A person 18 years of age or older or a person who is placed in an adult foster care family home or an adult foster care small group home; or (iii) A vulnerable person not less than 18 years of age who is suspected of being or believed to be abused, neglected, or exploited.
5. Statement Regarding Abuse, Neglect or Misappropriation

I hereby state that no governmental or regulatory agency has issued a substantiated finding of abuse, neglect or misappropriation against me.

(a) A substantiated finding of abuse, neglect or misappropriation is a disqualifying offense for employment in a long term care facility if the employment function has direct access to a resident or patient.

6. Understandings and Agreements

In consideration of this conditional employment, I hereby understand and agree that, if the criminal history check conducted under Public Health Code Section 20173 or the Adult Foster Care Facility Licensing Act Section 34a does not confirm these statements, my employment, independent contract, or clinical privileges (HFA only) will be terminated by the facility as required by Section 20173(1) of the Public Health Code or Sec 34a(1) of the Adult Foster Care Facility Licensing Act unless and until I can prove that the information is incorrect. The facility shall provide a copy of the results of the criminal history check conducted under Section 20173 or Section 34a to me upon request.

I also understand and agree that failure to meet any conditions described in subparagraphs 4(a) and 4(b) of this statement may result in the termination of my employment, independent contract, or clinical privileges (HFA only), and that those conditions are good cause for termination.

I further understand that an individual who knowingly provides false information regarding criminal convictions on this statement is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both. (MCL 333.20173(9) or MCL 400.734a(10))

In addition, as a condition of continued employment, independent contract, or clinical privileges, I agree that I will report to the home for the aged/adult foster care home, immediately upon being arrested for or convicted of 1 or more of the criminal offenses listed in either subparagraph 4(a) or 4(b) of this statement.

By signing below, I understand that my personal information and fingerprints will be used to conduct a search for prior criminal records through the Michigan Department of State Police and the Federal Bureau of Investigation. I hereby authorize the release of my criminal information to the agency listed on this form or to the Michigan Department of Community Health.

Name of Applicant (Print or Type)

__________________________________________

Signature of Applicant