

SENATE BILL No. 772

September 22, 2005, Introduced by Senators CHERRY, BASHAM, GOSCHKA, PRUSI, BARCIA, SCOTT, BRATER, THOMAS, CLARK-COLEMAN, JACOBS, CLARKE, OLSHOVE and EMERSON and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by adding sections 20173a and 20173b;
and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 20173A. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION
2 (2), A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY
3 MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING BED
4 SERVICES, HOME FOR THE AGED, OR HOME HEALTH AGENCY SHALL NOT
5 EMPLOY, INDEPENDENTLY CONTRACT WITH, OR GRANT CLINICAL PRIVILEGES
6 TO AN INDIVIDUAL WHO REGULARLY HAS DIRECT ACCESS TO OR PROVIDES
7 DIRECT SERVICES TO PATIENTS OR RESIDENTS IN THE HEALTH FACILITY OR

1 AGENCY AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
2 THIS SECTION IF THE INDIVIDUAL SATISFIES 1 OR MORE OF THE
3 FOLLOWING:

4 (A) HAS BEEN CONVICTED OF A FELONY OR AN ATTEMPT OR CONSPIRACY
5 TO COMMIT A FELONY, OTHER THAN A FELONY FOR A RELEVANT CRIME
6 DESCRIBED UNDER 42 USC 1320A-7 UNLESS 15 YEARS HAVE LAPSED SINCE
7 THE INDIVIDUAL COMPLETED ALL OF THE TERMS AND CONDITIONS OF HIS OR
8 HER SENTENCING, PAROLE, AND PROBATION FOR THAT CONVICTION PRIOR TO
9 THE DATE OF APPLICATION FOR EMPLOYMENT OR CLINICAL PRIVILEGES OR
10 THE DATE OF THE EXECUTION OF THE INDEPENDENT CONTRACT.

11 (B) HAS BEEN CONVICTED OF A MISDEMEANOR, OTHER THAN A
12 MISDEMEANOR FOR A RELEVANT CRIME DESCRIBED UNDER 42 USC 1320A-7
13 INVOLVING ABUSE, NEGLECT, ASSAULT, BATTERY, OR CRIMINAL SEXUAL
14 CONDUCT OR INVOLVING FRAUD OR THEFT AGAINST A VULNERABLE ADULT AS
15 THAT TERM IS DEFINED IN SECTION 145M OF THE MICHIGAN PENAL CODE,
16 1931 PA 328, MCL 750.145M, OR A STATE OR FEDERAL CRIME THAT IS
17 SUBSTANTIALLY SIMILAR TO A MISDEMEANOR DESCRIBED IN THIS
18 SUBDIVISION, WITHIN THE 10 YEARS IMMEDIATELY PRECEDING THE DATE OF
19 APPLICATION FOR EMPLOYMENT OR CLINICAL PRIVILEGES OR THE DATE OF
20 THE EXECUTION OF THE INDEPENDENT CONTRACT.

21 (C) HAS BEEN CONVICTED OF A RELEVANT CRIME DESCRIBED UNDER 42
22 USC 1320A-7.

23 (D) HAS BEEN THE SUBJECT OF A SUBSTANTIATED FINDING OF
24 NEGLECT, ABUSE, OR MISAPPROPRIATION OF PROPERTY BY THE DEPARTMENT
25 PURSUANT TO AN INVESTIGATION CONDUCTED IN ACCORDANCE WITH 42 USC
26 1395I-3 OR 1396R.

27 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION AND

1 SUBSECTION (5), A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME,
2 COUNTY MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING
3 BED SERVICES, HOME FOR THE AGED, OR HOME HEALTH AGENCY SHALL NOT
4 EMPLOY, INDEPENDENTLY CONTRACT WITH, OR GRANT PRIVILEGES TO AN
5 INDIVIDUAL WHO REGULARLY HAS DIRECT ACCESS TO OR PROVIDES DIRECT
6 SERVICES TO PATIENTS OR RESIDENTS IN THE HEALTH FACILITY OR AGENCY
7 AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
8 SECTION UNTIL THE HEALTH FACILITY OR AGENCY COMPLIES WITH
9 SUBSECTION (4). THIS SUBSECTION AND SUBSECTION (1) DO NOT APPLY TO
10 ANY OF THE FOLLOWING:

11 (A) EXCEPT AS OTHERWISE PROVIDED UNDER THIS SUBDIVISION, AN
12 INDIVIDUAL WHO IS EMPLOYED BY, UNDER INDEPENDENT CONTRACT TO, OR
13 GRANTED CLINICAL PRIVILEGES IN A HEALTH FACILITY OR AGENCY BEFORE
14 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION.
15 AN INDIVIDUAL WHO IS EXEMPT UNDER THIS SUBDIVISION IS NOT LIMITED
16 TO WORKING WITHIN THE HEALTH FACILITY OR AGENCY WITH WHICH HE OR
17 SHE IS EMPLOYED BY, UNDER INDEPENDENT CONTRACT TO, OR GRANTED
18 CLINICAL PRIVILEGES ON THE EFFECTIVE DATE OF THE AMENDATORY ACT
19 THAT ADDED THIS SECTION. THAT INDIVIDUAL MAY TRANSFER TO ANOTHER
20 HEALTH FACILITY OR AGENCY WITHOUT A CRIMINAL HISTORY CHECK BEING
21 CONDUCTED IN ACCORDANCE WITH SUBSECTIONS (1) AND (2). HOWEVER, IF
22 THE INDIVIDUAL IS SUBSEQUENTLY CONVICTED OF A CRIME DESCRIBED UNDER
23 SUBSECTION (1) (A), (B), OR (C) OR FOUND TO BE THE SUBJECT OF A
24 SUBSTANTIATED FINDING DESCRIBED UNDER SUBSECTION (1) (D), THEN HE OR
25 SHE IS SUBJECT TO THE REQUIREMENTS OF SUBSECTIONS (1) AND (2) AND
26 MAY BE DENIED EMPLOYMENT OR MAY BE TERMINATED FROM EMPLOYMENT.

27 (B) AN INDIVIDUAL WHO IS AN INDEPENDENT CONTRACTOR WITH A

1 HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY MEDICAL
2 CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING BED SERVICES,
3 HOME FOR THE AGED, OR HOME HEALTH AGENCY IF THE SERVICES FOR WHICH
4 HE OR SHE IS CONTRACTED ARE NOT DIRECTLY RELATED TO THE PROVISION
5 OF SERVICES TO A PATIENT OR RESIDENT OR IF THE SERVICES FOR WHICH
6 HE OR SHE IS CONTRACTED DO ALLOW FOR DIRECT ACCESS TO THE PATIENTS
7 OR RESIDENTS BUT ARE NOT PERFORMED ON AN ONGOING BASIS. THIS
8 EXCEPTION INCLUDES, BUT IS NOT LIMITED TO, INDEPENDENT CONTRACTORS
9 WHO PROVIDE UTILITY, MAINTENANCE, CONSTRUCTION, OR COMMUNICATIONS
10 SERVICES.

11 (3) AN INDIVIDUAL WHO APPLIES FOR EMPLOYMENT EITHER AS AN
12 EMPLOYEE OR AS AN INDEPENDENT CONTRACTOR OR FOR CLINICAL PRIVILEGES
13 WITH A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY
14 MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING BED
15 SERVICES, HOME FOR THE AGED, OR HOME HEALTH AGENCY AND HAS RECEIVED
16 A GOOD FAITH OFFER OF EMPLOYMENT, AN INDEPENDENT CONTRACT, OR
17 CLINICAL PRIVILEGES FROM THE HEALTH FACILITY OR AGENCY SHALL GIVE
18 WRITTEN CONSENT AT THE TIME OF APPLICATION FOR THE DEPARTMENT OF
19 STATE POLICE TO CONDUCT A CRIMINAL HISTORY CHECK UNDER SUBSECTION
20 (4), ALONG WITH IDENTIFICATION ACCEPTABLE TO THE DEPARTMENT OF
21 STATE POLICE.

22 (4) UPON RECEIPT OF THE WRITTEN CONSENT AND IDENTIFICATION
23 REQUIRED UNDER SUBSECTION (3), A HEALTH FACILITY OR AGENCY THAT IS
24 A NURSING HOME, COUNTY MEDICAL CARE FACILITY, HOSPICE, HOSPITAL
25 THAT PROVIDES SWING BED SERVICES, HOME FOR THE AGED, OR HOME HEALTH
26 AGENCY THAT HAS MADE A GOOD FAITH OFFER OF EMPLOYMENT OR AN
27 INDEPENDENT CONTRACT OR CLINICAL PRIVILEGES TO THE APPLICANT SHALL

1 MAKE A REQUEST TO THE DEPARTMENT OF STATE POLICE TO CONDUCT A
2 CRIMINAL HISTORY CHECK ON THE APPLICANT AND TO FORWARD THE
3 APPLICANT'S FINGERPRINTS TO THE FEDERAL BUREAU OF INVESTIGATION.
4 THE DEPARTMENT OF STATE POLICE SHALL REQUEST THE FEDERAL BUREAU OF
5 INVESTIGATION TO MAKE A DETERMINATION OF THE EXISTENCE OF ANY
6 NATIONAL CRIMINAL HISTORY PERTAINING TO THE APPLICANT. THE
7 APPLICANT SHALL PROVIDE THE DEPARTMENT OF STATE POLICE WITH A SET
8 OF FINGERPRINTS. THE REQUEST SHALL BE MADE IN A MANNER PRESCRIBED
9 BY THE DEPARTMENT OF STATE POLICE. THE HEALTH FACILITY OR AGENCY
10 SHALL MAKE THE WRITTEN CONSENT AND IDENTIFICATION AVAILABLE TO THE
11 DEPARTMENT OF STATE POLICE. THE HEALTH FACILITY OR AGENCY SHALL
12 MAKE A REQUEST TO THE DEPARTMENT TO CONDUCT A CHECK OF ALL RELEVANT
13 REGISTRIES ESTABLISHED PURSUANT TO FEDERAL REGULATIONS FOR ANY
14 SUBSTANTIATED FINDINGS OF ABUSE, NEGLECT, OR MISAPPROPRIATION OF
15 PROPERTY. IF THERE IS A CHARGE FOR CONDUCTING THE CRIMINAL HISTORY
16 CHECK, THE HEALTH FACILITY OR AGENCY REQUESTING THE CRIMINAL
17 HISTORY CHECK SHALL PAY THE COST OF THE CHARGE. THE HEALTH FACILITY
18 OR AGENCY SHALL NOT SEEK REIMBURSEMENT FOR THE CHARGE FROM THE
19 INDIVIDUAL WHO IS THE SUBJECT OF THE CRIMINAL HISTORY CHECK. THE
20 DEPARTMENT OF STATE POLICE SHALL CONDUCT A CRIMINAL HISTORY CHECK
21 ON THE APPLICANT NAMED IN THE REQUEST. THE DEPARTMENT OF STATE
22 POLICE SHALL PROVIDE THE HEALTH FACILITY OR AGENCY WITH A WRITTEN
23 REPORT OF THE CRIMINAL HISTORY CHECK CONDUCTED UNDER THIS
24 SUBSECTION. THE REPORT SHALL CONTAIN ANY CRIMINAL HISTORY RECORD
25 INFORMATION ON THE APPLICANT MAINTAINED BY THE DEPARTMENT OF STATE
26 POLICE. THE DEPARTMENT OF STATE POLICE SHALL PROVIDE THE RESULTS OF
27 THE FEDERAL BUREAU OF INVESTIGATION DETERMINATION TO THE DEPARTMENT

1 WITHIN 30 DAYS AFTER THE REQUEST IS MADE. IF THE REQUESTING HEALTH
2 FACILITY OR AGENCY IS NOT A STATE DEPARTMENT OR AGENCY AND IF A
3 CRIMINAL CONVICTION IS DISCLOSED ON THE FEDERAL BUREAU OF
4 INVESTIGATION DETERMINATION, THE DEPARTMENT SHALL NOTIFY THE HEALTH
5 FACILITY OR AGENCY AND THE APPLICANT IN WRITING OF THE TYPE OF
6 CRIME DISCLOSED ON THE FEDERAL BUREAU OF INVESTIGATION
7 DETERMINATION WITHOUT DISCLOSING THE DETAILS OF THE CRIME. ANY
8 CHARGES FOR FINGERPRINTING OR A FEDERAL BUREAU OF INVESTIGATION
9 DETERMINATION UNDER THIS SUBSECTION SHALL BE PAID IN THE MANNER
10 REQUIRED UNDER THIS SUBSECTION. THE NOTICE SHALL INCLUDE A
11 STATEMENT THAT THE APPLICANT HAS A RIGHT TO APPEAL A DECISION MADE
12 BY THE HEALTH FACILITY OR AGENCY REGARDING HIS OR HER EMPLOYMENT
13 ELIGIBILITY BASED ON THE CRIMINAL BACKGROUND CHECK. THE NOTICE
14 SHALL ALSO INCLUDE INFORMATION REGARDING WHERE TO FILE AND
15 DESCRIBING THE APPELLATE PROCEDURES ESTABLISHED UNDER SECTION
16 20173B.

17 (5) IF A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME,
18 COUNTY MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING
19 BED SERVICES, HOME FOR THE AGED, OR HOME HEALTH AGENCY DETERMINES
20 IT NECESSARY TO EMPLOY OR GRANT CLINICAL PRIVILEGES TO AN APPLICANT
21 BEFORE RECEIVING THE RESULTS OF THE APPLICANT'S CRIMINAL HISTORY
22 CHECK UNDER SUBSECTION (4), THE HEALTH FACILITY OR AGENCY MAY
23 CONDITIONALLY EMPLOY OR GRANT CONDITIONAL CLINICAL PRIVILEGES TO
24 THE INDIVIDUAL IF ALL OF THE FOLLOWING APPLY:

25 (A) THE HEALTH FACILITY OR AGENCY REQUESTS THE CRIMINAL
26 HISTORY CHECK UNDER SUBSECTION (4) UPON CONDITIONALLY EMPLOYING OR
27 CONDITIONALLY GRANTING CLINICAL PRIVILEGES TO THE INDIVIDUAL.

1 (B) THE INDIVIDUAL SIGNS A STATEMENT IN WRITING THAT INDICATES
2 ALL OF THE FOLLOWING:

3 (i) THAT HE OR SHE HAS NOT BEEN CONVICTED OF 1 OR MORE OF THE
4 CRIMES THAT ARE DESCRIBED IN SUBSECTION (1) (A), (B), AND (C) WITHIN
5 THE APPLICABLE TIME PERIOD PRESCRIBED BY SUBSECTION (1) (A) AND (B).

6 (ii) THAT HE OR SHE HAS NOT BEEN THE SUBJECT OF A SUBSTANTIATED
7 FINDING AS DESCRIBED IN SUBSECTION (1) (D).

8 (iii) THE INDIVIDUAL AGREES THAT, IF THE INFORMATION IN THE
9 CRIMINAL HISTORY CHECK CONDUCTED UNDER SUBSECTION (4) DOES NOT
10 CONFIRM THE INDIVIDUAL'S STATEMENTS UNDER SUBPARAGRAPHS (i) AND (ii),
11 HIS OR HER EMPLOYMENT OR CLINICAL PRIVILEGES WILL BE TERMINATED BY
12 THE HEALTH FACILITY OR AGENCY AS REQUIRED UNDER SUBSECTION (1)
13 UNLESS AND UNTIL THE INDIVIDUAL APPEALS AND CAN PROVE THAT THE
14 INFORMATION IS INCORRECT. THE HEALTH FACILITY OR AGENCY SHALL
15 PROVIDE A COPY OF THE RESULTS OF THE CRIMINAL HISTORY CHECK
16 CONDUCTED UNDER SUBSECTION (4) TO THE APPLICANT.

17 (iv) THAT HE OR SHE UNDERSTANDS THE CONDITIONS DESCRIBED IN
18 SUBPARAGRAPHS (i), (ii), AND (iii) THAT RESULT IN THE TERMINATION OF
19 HIS OR HER EMPLOYMENT OR CLINICAL PRIVILEGES AND THAT THOSE
20 CONDITIONS ARE GOOD CAUSE FOR TERMINATION.

21 (6) ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
22 THIS SECTION, THE DEPARTMENT SHALL DEVELOP AND DISTRIBUTE A MODEL
23 FORM FOR THE STATEMENT REQUIRED UNDER SUBSECTION (5) (B). THE
24 DEPARTMENT SHALL MAKE THE MODEL FORM AVAILABLE TO HEALTH FACILITIES
25 OR AGENCIES SUBJECT TO THIS SECTION UPON REQUEST AT NO CHARGE.

26 (7) IF AN INDIVIDUAL IS EMPLOYED AS A CONDITIONAL EMPLOYEE OR
27 IS GRANTED CONDITIONAL CLINICAL PRIVILEGES UNDER SUBSECTION (5),

1 AND THE REPORT DESCRIBED IN SUBSECTION (4) DOES NOT CONFIRM THE
2 INDIVIDUAL'S STATEMENT UNDER SUBSECTION (5) (B) (i) AND (ii), THE
3 HEALTH FACILITY OR AGENCY SHALL TERMINATE THE INDIVIDUAL'S
4 EMPLOYMENT OR CLINICAL PRIVILEGES AS REQUIRED BY SUBSECTION (1).

5 (8) AN INDIVIDUAL WHO KNOWINGLY PROVIDES FALSE INFORMATION
6 REGARDING CRIMINAL CONVICTIONS OR SUBSTANTIATED FINDINGS ON A
7 STATEMENT DESCRIBED IN SUBSECTION (5) (B) (i) OR (ii) IS GUILTY OF A
8 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR
9 A FINE OF NOT MORE THAN \$1,000.00, OR BOTH.

10 (9) A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY
11 MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING BED
12 SERVICES, HOME FOR THE AGED, OR HOME HEALTH AGENCY SHALL USE
13 CRIMINAL HISTORY RECORD INFORMATION OBTAINED UNDER SUBSECTION (4)
14 OR (5) ONLY FOR THE PURPOSE OF EVALUATING AN APPLICANT'S
15 QUALIFICATIONS FOR EMPLOYMENT, AN INDEPENDENT CONTRACT, OR CLINICAL
16 PRIVILEGES IN THE POSITION FOR WHICH HE OR SHE HAS APPLIED AND FOR
17 THE PURPOSES OF SUBSECTIONS (5) AND (7). A HEALTH FACILITY OR
18 AGENCY OR AN EMPLOYEE OF THE HEALTH FACILITY OR AGENCY SHALL NOT
19 DISCLOSE CRIMINAL HISTORY RECORD INFORMATION OBTAINED UNDER
20 SUBSECTION (4) TO A PERSON WHO IS NOT DIRECTLY INVOLVED IN
21 EVALUATING THE APPLICANT'S QUALIFICATIONS FOR EMPLOYMENT, AN
22 INDEPENDENT CONTRACT, OR CLINICAL PRIVILEGES. AN INDIVIDUAL WHO
23 KNOWINGLY USES OR DISSEMINATES THE CRIMINAL HISTORY RECORD
24 INFORMATION OBTAINED UNDER SUBSECTION (4) IN VIOLATION OF THIS
25 SUBSECTION IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT
26 FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN \$1,000.00, OR
27 BOTH. A PERSON WHO SUFFERS INJURY AS A RESULT OF A VIOLATION OF

1 THIS SUBSECTION MAY BRING A CIVIL CAUSE OF ACTION FOR DAMAGES
2 AGAINST THE PERSON WHO VIOLATES THIS SUBSECTION. UPON WRITTEN
3 REQUEST FROM ANOTHER HEALTH FACILITY OR AGENCY OR ADULT FOSTER CARE
4 FACILITY THAT IS CONSIDERING EMPLOYING, INDEPENDENTLY CONTRACTING
5 WITH, OR GRANTING CLINICAL PRIVILEGES TO AN INDIVIDUAL, A HEALTH
6 FACILITY OR AGENCY THAT HAS OBTAINED CRIMINAL HISTORY RECORD
7 INFORMATION UNDER THIS SECTION ON THAT INDIVIDUAL SHALL SHARE, WITH
8 THE CONSENT OF THE APPLICANT, THE INFORMATION WITH THE REQUESTING
9 HEALTH FACILITY OR AGENCY OR ADULT FOSTER CARE FACILITY. EXCEPT FOR
10 A KNOWING OR INTENTIONAL RELEASE OF FALSE INFORMATION, A HEALTH
11 FACILITY OR AGENCY HAS NO LIABILITY IN CONNECTION WITH THE RELEASE
12 OF CRIMINAL HISTORY RECORD INFORMATION UNDER THIS SUBSECTION.

13 (10) AS A CONDITION OF CONTINUED EMPLOYMENT, EACH EMPLOYEE,
14 INDEPENDENT CONTRACTOR, OR INDIVIDUAL GRANTED CLINICAL PRIVILEGES
15 SHALL AGREE IN WRITING TO REPORT TO THE HEALTH FACILITY OR AGENCY
16 IMMEDIATELY UPON EITHER OF THE FOLLOWING:

17 (A) BEING CONVICTED OF 1 OR MORE OF THE CRIMINAL OFFENSES
18 LISTED IN SUBSECTION (1) (A), (B), AND (C).

19 (B) BEING THE SUBJECT OF A SUBSTANTIATED FINDING OF NEGLECT,
20 ABUSE, OR MISAPPROPRIATION OF PROPERTY AS DESCRIBED IN SUBSECTION
21 (1) (D).

22 (11) WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY
23 ACT THAT ADDED THIS SECTION, THE DEPARTMENT SHALL SUBMIT A WRITTEN
24 REPORT TO THE LEGISLATURE REGARDING THE IMPACT AND EFFECTIVENESS OF
25 THIS AMENDATORY ACT AND ON THE FEASIBILITY OF IMPLEMENTING CRIMINAL
26 HISTORY CHECKS ON VOLUNTEERS WHO WORK IN THOSE HEALTH FACILITIES OR
27 AGENCIES AND ON STATE AGENCY EMPLOYEES WHO ARE INVOLVED IN THE

1 LICENSING OF THOSE HEALTH FACILITIES OR AGENCIES AND REGULATION OF
2 THOSE EMPLOYEES.

3 (12) AS USED IN THIS SECTION:

4 (A) "ADULT FOSTER CARE FACILITY" MEANS AN ADULT FOSTER CARE
5 FACILITY LICENSED UNDER THE ADULT FOSTER CARE FACILITY LICENSING
6 ACT, 1979 PA 218, MCL 400.701 TO 400.737.

7 (B) "HOME HEALTH AGENCY" MEANS A PERSON CERTIFIED BY MEDICARE
8 WHOSE BUSINESS IS TO PROVIDE TO INDIVIDUALS IN THEIR PLACES OF
9 RESIDENCE OTHER THAN IN A HOSPITAL, NURSING HOME, OR COUNTY MEDICAL
10 CARE FACILITY 1 OR MORE OF THE FOLLOWING SERVICES: NURSING
11 SERVICES, THERAPEUTIC SERVICES, SOCIAL WORK SERVICES, HOMEMAKER
12 SERVICES, HOME HEALTH AIDE SERVICES, OR OTHER RELATED SERVICES.

13 (C) "INDEPENDENT CONTRACT" MEANS A CONTRACT ENTERED INTO BY A
14 HEALTH FACILITY OR AGENCY WITH AN INDIVIDUAL WHO PROVIDES THE
15 CONTRACTED SERVICES INDEPENDENTLY OR A CONTRACT ENTERED INTO BY A
16 HEALTH FACILITY OR AGENCY WITH AN ORGANIZATION OR AGENCY THAT
17 EMPLOYS OR CONTRACTS WITH AN INDIVIDUAL AFTER COMPLYING WITH THE
18 REQUIREMENTS OF THIS SECTION TO PROVIDE THE CONTRACTED SERVICES TO
19 THE HEALTH FACILITY OR AGENCY ON BEHALF OF THE ORGANIZATION OR
20 AGENCY.

21 (D) "MEDICARE" MEANS BENEFITS UNDER THE FEDERAL MEDICARE
22 PROGRAM ESTABLISHED UNDER TITLE XVIII OF THE SOCIAL SECURITY ACT,
23 42 USC 1395 TO 1395GGG.

24 SEC. 20173B. (1) THE DEPARTMENT SHALL ESTABLISH AN EMPLOYMENT
25 ELIGIBILITY APPEAL BOARD. THE APPEAL BOARD SHALL CONSIST OF THE
26 FOLLOWING MEMBERS APPOINTED BY THE GOVERNOR:

27 (A) TWO REPRESENTATIVES OF THE DEPARTMENT'S BUREAU OF HEALTH

1 SYSTEMS WHO DEAL PRIMARILY WITH THE LICENSING OF HEALTH FACILITIES.

2 (B) TWO REPRESENTATIVES OF THE DEPARTMENT OF HUMAN SERVICES
3 WHO DEAL PRIMARILY WITH THE LICENSING OF ADULT FOSTER CARE
4 FACILITIES AND HOMES FOR THE AGED.

5 (C) TWO MEMBERS REPRESENTING THE PUBLIC.

6 (D) ONE MEMBER REPRESENTING PROVIDERS.

7 (E) ONE MEMBER REPRESENTING ORGANIZED LABOR GROUPS.

8 (F) ONE MEMBER REPRESENTING CONSUMERS OF LONG-TERM CARE
9 SERVICES.

10 (2) EXCEPT AS OTHERWISE PROVIDED UNDER SUBSECTION (4), THE
11 APPEAL BOARD SHALL HEAR AND DECIDE APPLICATIONS FOR APPEAL FROM
12 INDIVIDUALS WHO HAVE BEEN DISQUALIFIED FROM OR DENIED EMPLOYMENT BY
13 A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY MEDICAL
14 CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING BED SERVICES,
15 HOME FOR THE AGED, OR HOME HEALTH AGENCY, OR BY AN ADULT FOSTER
16 CARE FACILITY, BASED ON A CRIMINAL BACKGROUND CHECK CONDUCTED
17 PURSUANT TO SECTION 20173 OR 20173A.

18 (3) MEMBERS OF THE APPEAL BOARD SHALL SERVE FOR TERMS OF 3
19 YEARS OR UNTIL A SUCCESSOR IS APPOINTED, WHICHEVER IS LATER, EXCEPT
20 THAT OF THE MEMBERS FIRST APPOINTED 3 SHALL SERVE 3 YEARS, 3 SHALL
21 SERVE 2 YEARS, AND 3 SHALL SERVE 1 YEAR. IF A VACANCY OCCURS ON THE
22 APPEAL BOARD, THE GOVERNOR SHALL MAKE AN APPOINTMENT FOR THE
23 UNEXPIRED TERM IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT.
24 MEMBERS OF THE APPEAL BOARD SHALL SERVE WITHOUT COMPENSATION.
25 HOWEVER, MEMBERS OF THE APPEAL BOARD MAY BE REIMBURSED FOR THEIR
26 ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR
27 OFFICIAL DUTIES AS MEMBERS OF THE APPEAL BOARD.

1 (4) AN INDIVIDUAL WHO HAS BEEN CONVICTED OF A RELEVANT CRIME
2 AS DESCRIBED UNDER SECTION 20173A(1) (C) DOES NOT HAVE A RIGHT TO
3 APPEAL A DENIAL OF HIS OR HER EMPLOYMENT WITH A HEALTH FACILITY OR
4 AGENCY THAT IS A NURSING HOME, COUNTY MEDICAL CARE FACILITY,
5 HOSPICE, HOSPITAL THAT PROVIDES SWING BED SERVICES, HOME FOR THE
6 AGED, OR HOME HEALTH AGENCY. AN INDIVIDUAL WHO HAS BEEN CONVICTED
7 OF A FELONY, OTHER THAN THAT DESCRIBED UNDER SECTION 20173A(1) (C) ,
8 INVOLVING ABUSE, NEGLECT, ASSAULT, BATTERY, OR CRIMINAL SEXUAL
9 CONDUCT OR INVOLVING FRAUD OR THEFT AGAINST A VULNERABLE ADULT AS
10 THAT TERM IS DEFINED IN SECTION 145M OF THE MICHIGAN PENAL CODE,
11 1931 PA 328, MCL 750.145M, OR A STATE OR FEDERAL CRIME THAT IS
12 SUBSTANTIALLY SIMILAR TO A FELONY DESCRIBED IN THIS SUBDIVISION,
13 DOES NOT HAVE THE RIGHT TO APPEAL A DENIAL OF HIS OR HER EMPLOYMENT
14 WITH A HEALTH FACILITY DESCRIBED UNDER THIS SUBSECTION UNLESS 3
15 YEARS HAVE LAPSED SINCE HE OR SHE COMPLETED ALL OF THE SENTENCING
16 REQUIREMENTS, INCLUDING PROBATION, PAROLE, AND RESTITUTION FOR THAT
17 CONVICTION.

18 (5) THE DEPARTMENT MAY CHARGE A FEE TO COVER THE COST OF THE
19 APPEAL.

20 (6) THE DEPARTMENT SHALL PROMULGATE RULES TO IMPLEMENT THIS
21 SECTION. THE DEPARTMENT MAY PROMULGATE RULES TO PROVIDE FOR AN
22 EXPEDITED ADMINISTRATIVE APPEALS PROCESS FOR CERTAIN NONVIOLENT
23 CRIMES. THE APPEAL BOARD SHALL HEAR ALL APPEALS WITHIN 60 DAYS OF
24 RECEIVING THE APPLICATION. IF THE APPEAL BOARD FINDS UPON CLEAR AND
25 CONVINCING EVIDENCE THAT THE INDIVIDUAL WAS WRONGFULLY DISQUALIFIED
26 FROM OR DENIED EMPLOYMENT, THE APPEAL BOARD MAY GRANT THE APPELLANT
27 A CERTIFICATE OF EMPLOYABILITY. THE APPEAL BOARD MAY IMPOSE ANY

1 **CONDITIONS OR LIMITATIONS ON THAT CERTIFICATE AS IT DETERMINES**
2 **NECESSARY TO PROTECT THE HEALTH AND SAFETY OF PATIENTS OR RESIDENTS**
3 **WITHIN THOSE FACILITIES DESCRIBED UNDER SUBSECTION (2).**

4 Enacting section 1. (1) Section 20173 is repealed effective 60
5 days after the department secures the necessary waiver, and files a
6 written notice, as provided under subsection (2).

7 (2) Section 20173a of the public health code, 1978 PA 368, MCL
8 333.20173a, as added by this amendatory act, takes effect 60 days
9 after the department secures federal approval of the necessary
10 waivers to utilize federal funds to reimburse those facilities for
11 the costs incurred for requesting a national criminal history check
12 to be conducted by the federal bureau of investigation and files
13 with the secretary of state a written notice that the federal
14 approval has been secured.

15 (3) Section 20173b of the public health code, 1978 PA 368, MCL
16 333.20173b, as added by this amendatory act, takes effect the date
17 this amendatory act is enacted.