

SENATE BILL No. 674

December 15, 2015, Introduced by Senators HOPGOOD, MARLEAU, BIEDA, NOFS, KNEZEK and JOHNSON and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 20173a and 20173b (MCL 333.20173a and
333.20173b), as amended by 2014 PA 66.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20173a. (1) Except as otherwise provided in subsection
2 (2), a covered facility shall not employ, independently contract
3 with, or grant clinical privileges to an individual who regularly
4 has direct access to or provides direct services to patients or
5 residents in the covered facility if the individual satisfies 1 or
6 more of the following:

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

9 (b) Has been convicted of any of the following felonies, an
10 attempt or conspiracy to commit any of those felonies, or any other

1 state or federal crime that is similar to the felonies described in
2 this subdivision, other than a felony for a relevant crime
3 described under 42 USC 1320a-7(a), unless 15 years have lapsed
4 since the individual completed all of the terms and conditions of
5 his or her sentencing, parole, and probation for that conviction
6 ~~prior to~~ **BEFORE** the date of application for employment or clinical
7 privileges or the date of the execution of the independent
8 contract:

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

14 (ii) A felony involving cruelty or torture.

15 (iii) A felony under chapter XXA of the Michigan penal code,
16 1931 PA 328, MCL 750.145m to 750.145r.

17 (iv) A felony involving criminal sexual conduct.

18 (v) A felony involving abuse or neglect.

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

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

23 (c) Has been convicted of a felony or an attempt or conspiracy
24 to commit a felony, other than a felony for a relevant crime
25 described under 42 USC 1320a-7(a) or a felony described under
26 subdivision (b), unless 10 years have lapsed since the individual
27 completed all of the terms and conditions of his or her sentencing,

1 parole, and probation for that conviction ~~prior to~~ **BEFORE** the date
2 of application for employment or clinical privileges or the date of
3 the execution of the independent contract.

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

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

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

18 (iii) A misdemeanor involving criminal sexual conduct.

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

21 (v) A misdemeanor involving abuse or neglect.

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

1 the independent contract:

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

4 (ii) A misdemeanor involving home invasion.

5 (iii) A misdemeanor involving embezzlement.

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

9 (v) A misdemeanor involving larceny unless otherwise provided
10 under subdivision (g).

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

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

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

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

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

1 (iii) A misdemeanor under part 74 unless otherwise provided
2 under subdivision (g).

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

10 (i) A misdemeanor under part 74 if the individual, at the time
11 of conviction, is under the age of 18.

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

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

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

22 (2) Except as otherwise provided in this subsection, ~~or~~
23 ~~subsection (5),~~ a covered facility shall not employ, independently
24 contract with, or grant privileges to an individual who regularly
25 has direct access to or provides direct services to patients or
26 residents in the covered facility until the covered facility or
27 staffing agency has a criminal history check conducted in

1 compliance with this section or has received criminal history
2 record information in compliance with subsections (3) and ~~(10)~~.
3 (6). This subsection and subsection (1) do not apply to any of the
4 following:

5 (a) An individual who is employed by, under independent
6 contract to, or granted clinical privileges in a covered facility
7 before April 1, 2006. On or before April 1, 2011, an individual who
8 is exempt under this subdivision and who has not been the subject
9 of a criminal history check conducted in compliance with this
10 section shall provide the department of state police with a set of
11 fingerprints and the department of state police shall input those
12 fingerprints into the automated fingerprint identification system
13 database established under subsection ~~(13)~~. (9). An individual who
14 is exempt under this subdivision is not limited to working within
15 the covered facility with which he or she is employed by, under
16 independent contract to, or granted clinical privileges on April 1,
17 2006 but may transfer to another covered facility, adult foster
18 care facility, or mental health facility. If an individual who is
19 exempt under this subdivision is subsequently convicted of a crime
20 described under subsection (1)(a) to (g) or found to be the subject
21 of a substantiated finding described under subsection (1)(i) or an
22 order or disposition described under subsection (1)(h), or is found
23 to have been convicted of a relevant crime described under 42 USC
24 1320a-7(a), then he or she is no longer exempt and shall be
25 terminated from employment or denied employment or clinical
26 privileges.

27 (b) An individual who is under an independent contract with a

1 covered facility if he or she is not under the facility's control
2 and the services for which he or she is contracted are not directly
3 related to the provision of services to a patient or resident or if
4 the services for which he or she is contracted allow for direct
5 access to the patients or residents but are not performed on an
6 ongoing basis. This exception includes, but is not limited to, an
7 individual who is under an independent contract with the covered
8 facility to provide utility, maintenance, construction, or
9 communications services.

10 (3) An individual who applies for employment either as an
11 employee or as an independent contractor or for clinical privileges
12 with a staffing agency or covered facility and who has not been the
13 subject of a criminal history check conducted in compliance with
14 this section shall give written consent at the time of application
15 for the department of state police to conduct a criminal history
16 check under this section, along with identification acceptable to
17 the department of state police. If the applicant has been the
18 subject of a criminal history check conducted in compliance with
19 this section, the applicant shall give written consent at the time
20 of application for the covered facility or staffing agency to
21 obtain the criminal history record information as prescribed in
22 subsection (4) from the ~~relevant licensing or regulatory~~ department
23 and for the department of state police to conduct a criminal
24 history check under this section if the requirements of subsection
25 ~~(10)-(6)~~ are not met and a request to the ~~federal bureau of~~
26 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** to make a
27 determination of the existence of any national criminal history

1 pertaining to the applicant is necessary, along with identification
2 acceptable to the department of state police. Upon receipt of the
3 written consent to obtain the criminal history record information
4 and identification required under this subsection, the staffing
5 agency or covered facility that has made a ~~good faith~~ **GOOD-FAITH**
6 offer of employment or an independent contract or clinical
7 privileges to the applicant shall request the criminal history
8 record information from the ~~relevant licensing or regulatory~~
9 department and shall make a request regarding that applicant to the
10 ~~relevant licensing or regulatory~~ department to conduct a check of
11 all relevant registries in the manner required in subsection (4).
12 If the requirements of subsection ~~(10)~~ **(6)** are not met and a
13 request to the ~~federal bureau of investigation~~ **FEDERAL BUREAU OF**
14 **INVESTIGATION** to make a subsequent determination of the existence
15 of any national criminal history pertaining to the applicant is
16 necessary, the covered facility or staffing agency shall proceed in
17 the manner required in subsection (4). A staffing agency that
18 employs an individual who regularly has direct access to or
19 provides direct services to patients or residents under an
20 independent contract with a covered facility shall submit
21 information regarding the criminal history check conducted by the
22 staffing agency to the covered facility that has made a ~~good faith~~
23 **GOOD-FAITH** offer of independent contract to that applicant.

24 (4) Upon receipt of the written consent to conduct a criminal
25 history check and identification required under subsection (3), a
26 staffing agency or covered facility that has made a ~~good faith~~
27 **GOOD-FAITH** offer of employment or an independent contract or

1 clinical privileges to the applicant shall make a request to the
2 department of state police to conduct a criminal history check on
3 the applicant, to input the applicant's fingerprints into the
4 automated fingerprint identification system database, and to
5 forward the applicant's fingerprints to the ~~federal bureau of~~
6 ~~investigation.~~ **FEDERAL BUREAU OF INVESTIGATION.** The department of
7 state police shall request the ~~federal bureau of investigation~~
8 **FEDERAL BUREAU OF INVESTIGATION** to make a determination of the
9 existence of any national criminal history pertaining to the
10 applicant. The applicant shall provide the department of state
11 police with a set of fingerprints. The request shall be made in a
12 manner prescribed by the department of state police. The staffing
13 agency or covered facility shall make the written consent and
14 identification available to the department of state police. The
15 staffing agency or covered facility shall make a request regarding
16 that applicant to the ~~relevant licensing or regulatory~~ department
17 to conduct a check of all relevant registries established pursuant
18 ~~to~~ **UNDER** federal and state law and regulations for any
19 substantiated findings of abuse, neglect, or misappropriation of
20 property. If the department of state police or the ~~federal bureau~~
21 ~~of investigation~~ **FEDERAL BUREAU OF INVESTIGATION** charges a fee for
22 conducting the criminal history check, the staffing agency or
23 covered facility shall pay the cost of the charge. If the
24 department of state police or the ~~federal bureau of investigation~~
25 **FEDERAL BUREAU OF INVESTIGATION** charges a fee for conducting the
26 criminal history check, the department shall pay the cost of or
27 reimburse the charge for a covered facility that is a home for the

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

1 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** for conducting a
2 criminal history check or making a determination under this
3 subsection shall be paid in the manner required under this
4 subsection. The notice shall include a statement that the applicant
5 has a right to appeal the information relied ~~upon~~ **ON** by the
6 staffing agency or covered facility in making its decision
7 regarding his or her employment eligibility based on the criminal
8 history check. The notice shall also include information regarding
9 where to file and describing the appellate procedures established
10 under section 20173b.

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

17 ~~—— (a) The covered facility requests the criminal history check~~
18 ~~or criminal history record information under this section upon~~
19 ~~conditionally employing or conditionally granting clinical~~
20 ~~privileges to the individual.~~

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

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

26 ~~—— (ii) That he or she is not the subject of an order or~~
27 ~~disposition described in subsection (1)(h).~~

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

3 ~~—— (iv) That he or she agrees that, if the information in the~~
4 ~~criminal history check conducted under this section does not~~
5 ~~confirm the individual's statements under subparagraphs (i) to~~
6 ~~(iii), his or her employment or clinical privileges will be~~
7 ~~terminated by the covered facility as required under subsection (1)~~
8 ~~unless and until the individual appeals and can prove that the~~
9 ~~information is incorrect.~~

10 ~~—— (v) That he or she understands that the conditions described~~
11 ~~in subparagraphs (i) to (iv) may result in the termination of his~~
12 ~~or her employment or clinical privileges and that those conditions~~
13 ~~are good cause for termination.~~

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

1 ~~facility without supervision if all of the following conditions are~~
2 ~~met.~~

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

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

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

22 ~~—— (6) The department shall develop and distribute a model form~~
23 ~~for the statements required under subsection (5) (b) and (c). The~~
24 ~~department shall make the model form available to covered~~
25 ~~facilities 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 information under subsection (3) or report under subsection~~
2 ~~(4) does not confirm the individual's statement under subsection~~
3 ~~(5)(b)(i) to (iii), the covered facility shall terminate the~~
4 ~~individual's employment or clinical privileges as required by~~
5 ~~subsection (1).~~

6 ~~—— (8) An individual who knowingly provides false information~~
7 ~~regarding his or her identity, criminal convictions, or~~
8 ~~substantiated findings on a statement described in subsection~~
9 ~~(5)(b)(i) to (iii) is guilty of a misdemeanor punishable by~~
10 ~~imprisonment for not more than 93 days or a fine of not more than~~
11 ~~\$500.00, or both.~~

12 (5) ~~(9)~~—A staffing agency or covered facility shall use
13 criminal history record information obtained under subsection (3)
14 or (4) 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 staffing agency or
18 covered facility or an employee of the staffing agency or covered
19 facility shall not disclose criminal history record information
20 obtained under subsection (3) or (4) to a person who is not
21 directly involved in evaluating the applicant's qualifications for
22 employment, an independent contract, or clinical privileges. An
23 individual who knowingly uses or disseminates the criminal history
24 record information obtained under subsection (3) or (4) in
25 violation of this subsection is guilty of a misdemeanor punishable
26 by imprisonment for not more than 93 days or a fine of not more
27 than \$1,000.00, or both. Except for a knowing or intentional

1 release of false information, a staffing agency or covered facility
2 has no liability in connection with a criminal history check
3 conducted in compliance with this section or the release of
4 criminal history record information under this subsection.

5 (6) ~~(10)~~—Upon consent of an applicant as required in
6 subsection (3) and upon request from a staffing agency or covered
7 facility that has made a ~~good faith~~ **GOOD-FAITH** offer of employment
8 or an independent contract or clinical privileges to the applicant,
9 the ~~relevant licensing or regulatory~~ department shall review the
10 criminal history record information, if any, and notify the
11 requesting staffing agency or covered facility of the information
12 in the manner prescribed in subsection (4). Until the ~~federal~~
13 ~~bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION** implements
14 an automatic notification system similar to the system required of
15 the state police under subsection ~~(13)~~ **(9)** and federal regulations
16 allow the federal criminal record to be used for subsequent
17 authorized uses, as determined in an order issued by the
18 department, a staffing agency or covered facility may rely on the
19 criminal history record information provided by the ~~relevant~~
20 ~~licensing or regulatory~~ department under this subsection and a
21 request to the ~~federal bureau of investigation~~ **FEDERAL BUREAU OF**
22 **INVESTIGATION** to make a subsequent determination of the existence
23 of any national criminal history pertaining to the applicant is not
24 necessary if all of the following requirements are met:

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

27 (b) The applicant has been continuously employed by the

1 staffing agency or a covered facility, adult foster care facility,
2 or mental health facility since the criminal history check was
3 conducted in compliance with this section or meets the continuous
4 employment requirement of this subdivision other than being on
5 layoff status for less than 1 year from a covered facility, adult
6 foster care facility, or mental health facility.

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

11 (7) ~~(11)~~ As a condition of continued employment, each
12 employee, independent contractor, or individual granted clinical
13 privileges shall do each of the following:

14 (a) Agree in writing to report to the staffing agency or
15 covered facility immediately upon being arraigned for 1 or more of
16 the criminal offenses listed in subsection (1)(a) to (g), upon
17 being convicted of 1 or more of the criminal offenses listed in
18 subsection (1)(a) to (g), upon becoming the subject of an order or
19 disposition described under subsection (1)(h), and upon being the
20 subject of a substantiated finding of neglect, abuse, or
21 misappropriation of property as described in subsection (1)(i).
22 Reporting of an arraignment under this subdivision is not cause for
23 termination or denial of employment.

24 (b) If a set of fingerprints is not already on file with the
25 department of state police, provide the department of state police
26 with a set of fingerprints.

27 (8) ~~(12)~~ In addition to sanctions set forth in section 20165,

1 a licensee, owner, administrator, or operator of a staffing agency
2 or covered facility who knowingly and willfully fails to conduct
3 the criminal history checks as required under this section is
4 guilty of a misdemeanor punishable by imprisonment for not more
5 than 1 year or a fine of not more than \$5,000.00, or both.

6 (9) ~~(13)~~—In collaboration with the department of state police,
7 the department of technology, management, and budget shall
8 establish and maintain an automated fingerprint identification
9 system database that would allow the department of state police to
10 store and maintain all fingerprints submitted under this section
11 and would provide for an automatic notification if and when a
12 subsequent criminal arrest fingerprint card submitted into the
13 system matches a set of fingerprints previously submitted under
14 this section. Upon ~~such~~ **RECEIVING THAT** notification, the department
15 of state police shall immediately notify the department and the
16 department shall immediately contact each respective staffing
17 agency or covered facility with which that individual is
18 associated. Information in the database established under this
19 subsection is confidential, is not subject to disclosure under the
20 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and
21 shall not be disclosed to any person except for purposes of this
22 act or for law enforcement purposes.

23 (10) ~~(14)~~—The department shall maintain an electronic web-
24 based system to assist staffing agencies and covered facilities
25 required to check relevant registries and conduct criminal history
26 checks of its employees, independent contractors, and individuals
27 granted privileges and to provide for an automated notice to those

1 staffing agencies and covered facilities for those individuals
2 inputted in the system who, since the initial criminal history
3 check, have been convicted of a disqualifying offense or have been
4 the subject of a substantiated finding of abuse, neglect, or
5 misappropriation of property. The department may charge a staffing
6 agency a 1-time set-up fee of up to \$100.00 for access to the
7 electronic web-based system under this section.

8 (11) ~~(15)~~—As used in this section:

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

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

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

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

22 (c) "Covered facility" means a health facility or agency that
23 is a nursing home, county medical care facility, hospice, hospital
24 that provides swing bed services, home for the aged, or home health
25 agency.

26 (d) "Criminal history check conducted in compliance with this
27 section" includes a criminal history check conducted under this

1 section, under section 134a of the mental health code, 1974 PA 258,
2 MCL 330.1134a, or under section 34b of the adult foster care
3 facility licensing act, 1979 PA 218, MCL 400.734b.

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

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

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

21 (h) "Medicare" means benefits under the federal ~~medicare~~
22 **MEDICARE** program established under title XVIII of the social
23 security act, 42 USC 1395 to ~~1395kkk-1~~. **1395lll**.

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

27 (j) "Staffing agency" means an entity that recruits candidates

1 and provides temporary and permanent qualified staffing for covered
2 facilities, including independent contractors.

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

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

10 (ii) Directs or oversees 1 or more of the following:

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

13 (B) The tasks performed by the individual.

14 (C) The individual's work schedule.

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

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

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

22 Sec. 20173b. (1) An individual who has been disqualified from
23 or denied employment by a health facility or agency that is a
24 nursing home, county medical care facility, hospice, hospital that
25 provides swing bed services, home for the aged, or home health
26 agency or by a psychiatric facility or other facility defined in 42
27 USC 1396d(d) based on a criminal history check conducted pursuant

1 ~~to UNDER~~ section 20173 ~~or~~ 20173a or pursuant to ~~UNDER~~ section 134a
2 of the mental health code, 1974 PA 258, MCL 330.1134a,
3 respectively, may appeal to the department if he or she believes
4 that the criminal history report is inaccurate, and the appeal
5 shall be conducted as a contested case hearing pursuant to ~~UNDER~~
6 the administrative procedures act of 1969. The individual shall
7 file the appeal with the director of the department within 15
8 business days after receiving the written report of the criminal
9 history check unless the conviction contained in the criminal
10 history report is ~~one~~ **A CONVICTION** that may be expunged or set
11 aside. If an individual has been disqualified or denied employment
12 based on a conviction that may be expunged or set aside, then he or
13 she shall file the appeal on a form provided by the department
14 within 15 business days after a court order granting or denying his
15 or her application to expunge or set aside that conviction is
16 granted. If the order is granted and the conviction is expunged or
17 set aside, then the individual shall not be disqualified or denied
18 employment based solely on that conviction. The director shall
19 review the appeal and issue a written decision within 30 business
20 days after receiving the appeal. The decision of the director is
21 final.

22 ~~—— (2) Beginning February 17, 2007 and each year thereafter for~~
23 ~~the next 3 years, the department shall provide the legislature with~~
24 ~~a written report regarding the appeals process implemented under~~
25 ~~this section for employees subject to criminal history checks. The~~
26 ~~report shall include, but is not limited to, for the immediately~~
27 ~~preceding year the number of applications for appeal received, the~~

1 ~~number of inaccuracies found and appeals granted with regard to the~~
2 ~~criminal history checks conducted under section 20173a, the average~~
3 ~~number of days necessary to complete the appeals process for each~~
4 ~~appeal, and the number of appeals rejected without a hearing and a~~
5 ~~brief explanation of the denial.~~

6 (2) ~~(3)~~As used in this section, "business day" means a day
7 other than a Saturday, Sunday, or any legal holiday.

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