Health facilities; employees; criminal history check on employees of certain health facilities and employment eligibility appeal board; require and provide for.
Health facilities: employees; Health facilities: nursing homes; Health facilities: hospices; Criminal procedure: background check; State agencies (existing): community health

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:

SEC. 20173A. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION
(2), A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY
MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING BED
SERVICES, HOME FOR THE AGED, OR HOME HEALTH AGENCY SHALL NOT
EMPLOY, INDEPENDENTLY CONTRACT WITH, OR GRANT CLINICAL PRIVILEGES
TO AN INDIVIDUAL WHO REGULARLY HAS DIRECT ACCESS TO OR PROVIDES
DIRECT SERVICES TO PATIENTS OR RESIDENTS IN THE HEALTH FACILITY OR
AGENCY AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
THIS SECTION IF THE INDIVIDUAL SATISFIES 1 OR MORE OF THE
FOLLOWING:

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

(B) HAS BEEN CONVICTED OF A MISDEMEANOR, OTHER THAN A
MISDEMEANOR FOR A RELEVANT CRIME DESCRIBED UNDER 42 USC 1320A-7
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.

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

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

(2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION AND
SUBSECTION (5), A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING BED SERVICES, HOME FOR THE AGED, OR HOME HEALTH AGENCY SHALL NOT EMPLOY, INDEPENDENTLY CONTRACT WITH, OR GRANT PRIVILEGES TO AN INDIVIDUAL WHO REGULARLY HAS DIRECT ACCESS TO OR PROVIDES DIRECT SERVICES TO PATIENTS OR RESIDENTS IN THE 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). THIS SUBSECTION AND SUBSECTION (1) DO NOT APPLY TO ANY OF THE FOLLOWING:

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

(B) AN INDIVIDUAL WHO IS AN INDEPENDENT CONTRACTOR WITH A
HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY MEDICAL
CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING BED SERVICES,
HOME FOR THE AGED, OR HOME HEALTH AGENCY IF THE SERVICES FOR WHICH
HE OR SHE IS CONTRACTED ARE NOT DIRECTLY RELATED TO THE PROVISION
OF SERVICES TO A PATIENT OR RESIDENT OR IF THE SERVICES FOR WHICH
HE OR SHE IS CONTRACTED DO ALLOW FOR DIRECT ACCESS TO THE PATIENTS
OR RESIDENTS BUT ARE NOT PERFORMED ON AN ONGOING BASIS. THIS
EXCEPTION INCLUDES, BUT IS NOT LIMITED TO, INDEPENDENT CONTRACTORS
WHO PROVIDE UTILITY, MAINTENANCE, CONSTRUCTION, OR COMMUNICATIONS
SERVICES.

(3) AN INDIVIDUAL WHO APPLIES FOR EMPLOYMENT EITHER AS AN
EMPLOYEE OR AS AN INDEPENDENT CONTRACTOR OR FOR CLINICAL PRIVILEGES
WITH A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY
MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING BED
SERVICES, HOME FOR THE AGED, OR HOME HEALTH AGENCY AND 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), ALONG WITH IDENTIFICATION ACCEPTABLE TO THE DEPARTMENT OF
STATE POLICE.

(4) UPON RECEIPT OF THE WRITTEN CONSENT AND IDENTIFICATION
REQUIRED UNDER SUBSECTION (3), A HEALTH FACILITY OR AGENCY THAT IS
A NURSING HOME, COUNTY MEDICAL CARE FACILITY, HOSPICE, HOSPITAL
THAT PROVIDES SWING BED SERVICES, HOME FOR THE AGED, OR HOME HEALTH
AGENCY 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 FORWARD THE
APPLICANT'S FINGERPRINTS TO THE FEDERAL BUREAU OF INVESTIGATION.
THE DEPARTMENT OF STATE POLICE SHALL REQUEST THE FEDERAL BUREAU OF
INVESTIGATION TO MAKE A DETERMINATION OF THE EXISTENCE OF ANY
NATIONAL CRIMINAL HISTORY PERTAINING TO THE APPLICANT. THE
APPLICANT SHALL PROVIDE THE DEPARTMENT OF STATE POLICE WITH A SET
OF FINGERPRINTS. THE REQUEST SHALL BE MADE IN A MANNER PRESCRIBED
BY THE DEPARTMENT OF STATE POLICE. THE HEALTH FACILITY OR AGENCY
SHALL MAKE THE WRITTEN CONSENT AND IDENTIFICATION AVAILABLE TO THE
DEPARTMENT OF STATE POLICE. THE HEALTH FACILITY OR AGENCY SHALL
MAKE A REQUEST TO THE DEPARTMENT TO CONDUCT A CHECK OF ALL RELEVANT
REGISTRIES ESTABLISHED PURSUANT TO FEDERAL REGULATIONS FOR ANY
SUBSTANTIATED FINDINGS OF ABUSE, NEGLECT, OR MISAPPROPRIATION OF
PROPERTY. 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. THE DEPARTMENT OF STATE POLICE SHALL PROVIDE THE RESULTS OF
THE FEDERAL BUREAU OF INVESTIGATION DETERMINATION TO THE DEPARTMENT
WITHIN 30 DAYS AFTER THE REQUEST IS MADE. IF THE REQUESTING HEALTH
FACILITY OR AGENCY IS NOT A STATE DEPARTMENT OR AGENCY AND IF A
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. ANY
CHARGES FOR FINGERPRINTING OR A FEDERAL BUREAU OF INVESTIGATION
DETERMINATION UNDER THIS SUBSECTION SHALL BE PAID IN THE MANNER
REQUIRED UNDER THIS SUBSECTION. THE NOTICE SHALL INCLUDE A
STATEMENT THAT THE APPLICANT HAS A RIGHT TO APPEAL A DECISION MADE
BY THE HEALTH FACILITY OR AGENCY REGARDING HIS OR HER EMPLOYMENT
ELIGIBILITY BASED ON THE CRIMINAL BACKGROUND CHECK. THE NOTICE
SHALL ALSO INCLUDE INFORMATION REGARDING WHERE TO FILE AND
DESCRIBING THE APPELLATE PROCEDURES ESTABLISHED UNDER SECTION
20173B.

(5) IF A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME,
COUNTY MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING
BED SERVICES, HOME FOR THE AGED, OR HOME HEALTH AGENCY 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), 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) 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), (B), AND (C) WITHIN
THE APPLICABLE TIME PERIOD PRESCRIBED BY SUBSECTION (1)(A) AND (B).

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

(iii) THE INDIVIDUAL AGREES THAT, IF THE INFORMATION IN THE
CRIMINAL HISTORY CHECK CONDUCTED UNDER SUBSECTION (4) DOES NOT
CONFIRM THE INDIVIDUAL'S STATEMENTS UNDER SUBPARAGRAPHS (i) AND (ii),
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 APPEALS AND 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) TO THE APPLICANT.

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

(6) 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 (5)(B). THE
DEPARTMENT SHALL MAKE THE MODEL FORM AVAILABLE TO HEALTH FACILITIES
OR AGENCIES SUBJECT TO THIS SECTION UPON REQUEST AT NO CHARGE.

(7) IF AN INDIVIDUAL IS EMPLOYED AS A CONDITIONAL EMPLOYEE OR
IS GRANTED CONDITIONAL CLINICAL PRIVILEGES UNDER SUBSECTION (5),
AND THE REPORT DESCRIBED IN SUBSECTION (4) DOES NOT CONFIRM THE
INDIVIDUAL'S STATEMENT UNDER SUBSECTION (5)(B)(i) AND (ii), THE
HEALTH FACILITY OR AGENCY SHALL TERMINATE THE INDIVIDUAL'S
EMPLOYMENT OR CLINICAL PRIVILEGES AS REQUIRED BY SUBSECTION (1).

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

(9) A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY
MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING BED
SERVICES, HOME FOR THE AGED, OR HOME HEALTH AGENCY SHALL USE
CRIMINAL HISTORY RECORD INFORMATION OBTAINED UNDER SUBSECTION (4)
OR (5) ONLY FOR THE PURPOSE OF EVALUATING AN APPLICANT'S
QUALIFICATIONS FOR EMPLOYMENT, AN INDEPENDENT CONTRACT, OR CLINICAL
PRIVILEGES IN THE POSITION FOR WHICH HE OR SHE HAS APPLIED AND FOR
THE PURPOSES OF SUBSECTIONS (5) AND (7). A HEALTH FACILITY OR
AGENCY OR AN EMPLOYEE OF THE HEALTH FACILITY OR AGENCY SHALL NOT
DISCLOSE CRIMINAL HISTORY RECORD INFORMATION OBTAINED UNDER
SUBSECTION (4) TO A PERSON WHO IS NOT DIRECTLY INVOLVED IN
EVALUATING THE APPLICANT'S QUALIFICATIONS FOR EMPLOYMENT, AN
INDEPENDENT CONTRACT, OR CLINICAL PRIVILEGES. AN INDIVIDUAL WHO
KNOWINGLY USES OR DISSEMINATES THE CRIMINAL HISTORY RECORD
INFORMATION OBTAINED UNDER SUBSECTION (4) IN VIOLATION OF THIS
SUBSECTION IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT
FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN $1,000.00, OR
BOTH. A PERSON WHO SUFFERS INJURY AS A RESULT OF A VIOLATION OF
THIS SUBSECTION MAY BRING A CIVIL CAUSE OF ACTION FOR DAMAGES
AGAINST THE PERSON WHO VIOLATES THIS SUBSECTION. 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, WITH
THE CONSENT OF THE APPLICANT, 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 THE RELEASE
OF CRIMINAL HISTORY RECORD INFORMATION UNDER THIS SUBSECTION.

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

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

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

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

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

(C) "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 EMPLOYED OR CONTRACTED 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.

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

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

(A) TWO REPRESENTATIVES OF THE DEPARTMENT'S BUREAU OF HEALTH
SYSTEMS WHO DEAL PRIMARILY WITH THE LICENSING OF HEALTH FACILITIES.

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

(C) TWO MEMBERS REPRESENTING THE PUBLIC.

(D) ONE MEMBER REPRESENTING PROVIDERS.

(E) ONE MEMBER REPRESENTING ORGANIZED LABOR GROUPS.

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

(2) EXCEPT AS OTHERWISE PROVIDED UNDER SUBSECTION (4), THE
APPEAL BOARD SHALL HEAR AND DECIDE APPLICATIONS FOR APPEAL FROM
INDIVIDUALS WHO HAVE BEEN DISQUALIFIED FROM OR DENIED EMPLOYMENT BY
A HEALTH FACILITY OR AGENCY THAT IS A NURSING HOME, COUNTY MEDICAL
CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING BED SERVICES,
HOME FOR THE AGED, OR HOME HEALTH AGENCY, OR BY AN ADULT FOSTER
CARE FACILITY, BASED ON A CRIMINAL BACKGROUND CHECK CONDUCTED
Pursuant to Section 20173 or 20173a.

(3) MEMBERS OF THE APPEAL BOARD SHALL SERVE FOR TERMS OF 3
YEARS OR UNTIL A SUCCESSOR IS APPOINTED, WHICHEVER IS LATER, EXCEPT
THAT OF THE MEMBERS FIRST APPOINTED 3 SHALL SERVE 3 YEARS, 3 SHALL
SERVE 2 YEARS, AND 3 SHALL SERVE 1 YEAR. IF A VACANCY OCCURS ON THE
APPEAL BOARD, THE GOVERNOR SHALL MAKE AN APPOINTMENT FOR THE
UNEXPIRED TERM IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT.
MEMBERS OF THE APPEAL BOARD SHALL SERVE WITHOUT COMPENSATION.
HOWEVER, MEMBERS OF THE APPEAL BOARD MAY BE REIMBURSED FOR THEIR
ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR
OFFICIAL DUTIES AS MEMBERS OF THE APPEAL BOARD.
(4) An individual who has been convicted of a relevant crime as described under section 20173a(1)(c) does not have a right to appeal a denial of his or her employment with a health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency. An individual who has been convicted of a felony, other than that described under section 20173a(1)(c), 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, does not have the right to appeal a denial of his or her employment with a health facility described under this subsection unless 3 years have lapsed since he or she completed all of the sentencing requirements, including probation, parole, and restitution for that conviction.

(5) The department may charge a fee to cover the cost of the appeal.

(6) The department shall promulgate rules to implement this section. The department may promulgate rules to provide for an expedited administrative appeals process for certain nonviolent crimes. The appeal board shall hear all appeals within 60 days of receiving the application. If the appeal board finds upon clear and convincing evidence that the individual was wrongfully disqualified from or denied employment, the appeal board may grant the appellant a certificate of employability. The appeal board may impose any
CONDITIONS OR LIMITATIONS ON THAT CERTIFICATE AS IT DETERMINES
NECESSARY TO PROTECT THE HEALTH AND SAFETY OF PATIENTS OR RESIDENTS
WITHIN THOSE FACILITIES DESCRIBED UNDER SUBSECTION (2).

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

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

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