

# HOUSE BILL No. 5347

February 20, 2014, Introduced by Reps. Haines, Lori, Cavanagh, Kelly, Schor, Singh, Poleski, Graves, O'Brien, Slavens, Cotter, Leonard, Foster, Geiss, Lyons and Tlaib and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 20173a, 20173b, 21717, 21718, and 21765 (MCL 333.20173a, 333.20173b, 333.21717, 333.21718, and 333.21765), section 20173a as amended by 2010 PA 291 and section 20173b as added by 2006 PA 28.

**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

1 more of the following:

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

4 (b) Has been convicted of any of the following felonies, an  
5 attempt or conspiracy to commit any of those felonies, or any other  
6 state or federal crime that is similar to the felonies described in  
7 this subdivision, other than a felony for a relevant crime  
8 described under 42 USC 1320a-7(a), unless 15 years have lapsed  
9 since the individual completed all of the terms and conditions of  
10 his or her sentencing, parole, and probation for that conviction  
11 prior to the date of application for employment or clinical  
12 privileges or the date of the execution of the independent  
13 contract:

14 (i) A felony that involves the intent to cause death or serious  
15 impairment of a body function, that results in death or serious  
16 impairment of a body function, that involves the use of force or  
17 violence, or that involves the threat of the use of force or  
18 violence.

19 (ii) A felony involving cruelty or torture.

20 (iii) A felony under chapter XXA of the Michigan penal code,  
21 1931 PA 328, MCL 750.145m to 750.145r.

22 (iv) A felony involving criminal sexual conduct.

23 (v) A felony involving abuse or neglect.

24 (vi) A felony involving the use of a firearm or dangerous  
25 weapon.

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

1 (c) Has been convicted of a felony or an attempt or conspiracy  
2 to commit a felony, other than a felony for a relevant crime  
3 described under 42 USC 1320a-7(a) or a felony described under  
4 subdivision (b), unless 10 years have lapsed since the individual  
5 completed all of the terms and conditions of his or her sentencing,  
6 parole, and probation for that conviction prior to the date of  
7 application for employment or clinical privileges or the date of  
8 the execution of the independent contract.

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

16 (i) A misdemeanor involving the use of a firearm or dangerous  
17 weapon with the intent to injure, the use of a firearm or dangerous  
18 weapon that results in a personal injury, or a misdemeanor  
19 involving the use of force or violence or the threat of the use of  
20 force or violence.

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

23 (iii) A misdemeanor involving criminal sexual conduct.

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

26 (v) A misdemeanor involving abuse or neglect.

27 (e) Has been convicted of any of the following misdemeanors,

1 other than a misdemeanor for a relevant crime described under 42  
2 USC 1320a-7(a), or a state or federal crime that is substantially  
3 similar to the misdemeanors described in this subdivision, within  
4 the 5 years immediately preceding the date of application for  
5 employment or clinical privileges or the date of the execution of  
6 the independent contract:

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

9 (ii) A misdemeanor involving home invasion.

10 (iii) A misdemeanor involving embezzlement.

11 (iv) A misdemeanor involving negligent homicide or a violation  
12 of section 601d(1) of the Michigan vehicle code, 1949 PA 300, MCL  
13 257.601d.

14 (v) A misdemeanor involving larceny unless otherwise provided  
15 under subdivision (g).

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

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

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

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

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

6           (iii) A misdemeanor under part 74 unless otherwise provided  
7 under subdivision (g).

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

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

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

20           (h) Is the subject of an order or disposition under section  
21 16b of chapter IX of the code of criminal procedure, 1927 PA 175,  
22 MCL 769.16b.

23           (i) Engages in conduct that becomes the subject of a  
24 substantiated finding of neglect, abuse, or misappropriation of  
25 property by a state or federal agency pursuant to an investigation  
26 conducted in accordance with 42 USC 1395i-3 or 1396r.

27           (2) Except as otherwise provided in this subsection or

1 subsection (5), a covered facility shall not employ, independently  
2 contract with, or grant privileges to an individual who regularly  
3 has direct access to or provides direct services to patients or  
4 residents in the covered facility until the covered facility or  
5 staffing agency has a criminal history check conducted in  
6 compliance with this section or has received criminal history  
7 record information in compliance with subsections (3) and (10).  
8 This subsection and subsection (1) do not apply to any of the  
9 following:

10 (a) An individual who is employed by, under independent  
11 contract to, or granted clinical privileges in a covered facility  
12 before April 1, 2006. On or before April 1, 2011, an individual who  
13 is exempt under this subdivision and who has not been the subject  
14 of a criminal history check conducted in compliance with this  
15 section shall provide the department of state police with a set of  
16 fingerprints and the department of state police shall input those  
17 fingerprints into the automated fingerprint identification system  
18 database established under subsection (13). An individual who is  
19 exempt under this subdivision is not limited to working within the  
20 covered facility with which he or she is employed by, under  
21 independent contract to, or granted clinical privileges on April 1,  
22 2006 but may transfer to another covered facility, adult foster  
23 care facility, or mental health facility. If an individual who is  
24 exempt under this subdivision is subsequently convicted of a crime  
25 described under subsection (1)(a) to (g) or found to be the subject  
26 of a substantiated finding described under subsection (1)(i) or an  
27 order or disposition described under subsection (1)(h), or is found

1 to have been convicted of a relevant crime described under 42 USC  
2 1320a-7(a), then he or she is no longer exempt and shall be  
3 terminated from employment or denied employment or clinical  
4 privileges.

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

15 (3) An individual who applies for employment either as an  
16 employee or as an independent contractor or for clinical privileges  
17 with a staffing agency or covered facility and who has not been the  
18 subject of a criminal history check conducted in compliance with  
19 this section shall give written consent at the time of application  
20 for the department of state police to conduct a criminal history  
21 check under this section, along with identification acceptable to  
22 the department of state police. If the applicant has been the  
23 subject of a criminal history check conducted in compliance with  
24 this section, the applicant shall give written consent at the time  
25 of application for the covered facility or staffing agency to  
26 obtain the criminal history record information as prescribed in  
27 subsection (4) from the relevant licensing or regulatory department

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



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

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

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

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

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

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

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

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

27 (iii) That he or she has not been the subject of a substantiated

1 finding as described in subsection (1)(i).

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

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

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

1 met:

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

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

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

21 (6) The department shall develop and distribute a model form  
22 for the statements required under subsection (5)(b) and (c). The  
23 department shall make the model form available to covered  
24 facilities upon request at no charge.

25 (7) If an individual is employed as a conditional employee or  
26 is granted conditional clinical privileges under subsection (5),  
27 and the information under subsection (3) or report under subsection

1 (4) does not confirm the individual's statement under subsection  
2 (5) (b) (i) to (iii), the covered facility shall terminate the  
3 individual's employment or clinical privileges as required by  
4 subsection (1).

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

11 (9) A staffing agency or covered facility shall use criminal  
12 history record information obtained under subsection (3) or (4)  
13 only for the purpose of evaluating an applicant's qualifications  
14 for employment, an independent contract, or clinical privileges in  
15 the position for which he or she has applied and for the purposes  
16 of subsections (5) and (7). A staffing agency or covered facility  
17 or an employee of the staffing agency or covered facility shall not  
18 disclose criminal history record information obtained under  
19 subsection (3) or (4) to a person who is not directly involved in  
20 evaluating the applicant's qualifications for employment, an  
21 independent contract, or clinical privileges. An individual who  
22 knowingly uses or disseminates the criminal history record  
23 information obtained under subsection (3) or (4) in violation of  
24 this subsection is guilty of a misdemeanor punishable by  
25 imprisonment for not more than 93 days or a fine of not more than  
26 \$1,000.00, or both. Except for a knowing or intentional release of  
27 false information, a staffing agency or covered facility has no

1 liability in connection with a criminal history check conducted in  
2 compliance with this section or the release of criminal history  
3 record information under this subsection.

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

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

25 (b) The applicant has been continuously employed by the  
26 staffing agency or a covered facility, adult foster care facility,  
27 or mental health facility since the criminal history check was

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

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

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

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

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

25 (12) In addition to sanctions set forth in section 20165, a  
26 licensee, owner, administrator, or operator of a staffing agency or  
27 covered facility who knowingly and willfully fails to conduct the



1 criminal history checks as required under this section is guilty of  
2 a misdemeanor punishable by imprisonment for not more than 1 year  
3 or a fine of not more than \$5,000.00, or both.

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

21 (14) The department shall maintain an electronic web-based  
22 system to assist staffing agencies and covered facilities required  
23 to check relevant registries and conduct criminal history checks of  
24 its employees, independent contractors, and individuals granted  
25 privileges and to provide for an automated notice to those staffing  
26 agencies and covered facilities for those individuals inputted in  
27 the system who, since the initial criminal history check, have been

1 convicted of a disqualifying offense or have been the subject of a  
2 substantiated finding of abuse, neglect, or misappropriation of  
3 property. The department may charge a staffing agency a 1-time set-  
4 up fee of up to \$100.00 for access to the electronic web-based  
5 system under this section.

6 (15) As used in this section:

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

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

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

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

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

24 (d) "Criminal history check conducted in compliance with this  
25 section" includes a criminal history check conducted under this  
26 section, under section 134a of the mental health code, 1974 PA 258,  
27 MCL 330.1134a, or under section 34b of the adult foster care

1 facility licensing act, 1979 PA 218, MCL 400.734b.

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

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

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

18 (h) "Medicare" means benefits under the federal medicare  
19 program established under title XVIII of the social security act,  
20 42 USC 1395 to ~~1395iii-1395kkk-1~~.

21 (i) "Mental health facility" means a psychiatric facility or  
22 ~~intermediate care facility for people with mental retardation~~ **OTHER**  
23 **FACILITY DEFINED IN 42 USC 1396D(D) AS DESCRIBED** under the mental  
24 health code, 1974 PA 258, MCL 330.1001 to 330.2106.

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

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

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

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

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

11 (B) The tasks performed by the individual.

12 (C) The individual's work schedule.

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

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

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

20 Sec. 20173b. (1) An individual who has been disqualified from  
21 or denied employment by a health facility or agency that is a  
22 nursing home, county medical care facility, hospice, hospital that  
23 provides swing bed services, home for the aged, or home health  
24 agency or by a psychiatric facility or ~~intermediate care facility~~  
25 ~~for people with mental retardation~~ **OTHER FACILITY DEFINED IN 42 USC**  
26 **1396D(D)** based on a criminal history check conducted pursuant to  
27 section 20173 or 20173a or pursuant to section 134a of the mental

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

20 (2) ~~One year after the effective date of this section~~  
21 **BEGINNING FEBRUARY 17, 2007** and each year thereafter for the next 3  
22 years, the department shall provide the legislature with a written  
23 report regarding the appeals process implemented under this section  
24 for employees subject to criminal history checks. The report shall  
25 include, but is not limited to, for the immediately preceding year  
26 the number of applications for appeal received, the number of  
27 inaccuracies found and appeals granted with regard to the criminal

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

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

7 Sec. 21717. An individual shall not be admitted or retained  
 8 for care in a nursing home who requires special medical or surgical  
 9 treatment, or treatment for acute mental illness, ~~mental~~  
 10 ~~retardation,~~ **DEVELOPMENTAL DISABILITY**, communicable tuberculosis,  
 11 or a communicable disease, unless the home is able to provide an  
 12 area and a program for the care. The department shall approve both  
 13 the area and the program. ~~, except for the programs providing~~  
 14 ~~treatment for mental illness and mental retardation which shall be~~  
 15 ~~approved by the department of mental health.~~

16 Sec. 21718. (1) Except as provided in subsections (3) and (4),  
 17 as a condition of skilled nursing facility certification and  
 18 participation in the title 19 program of the social security act,  
 19 ~~42 U.S.C.—USC 1396 to 1396k,~~ **1396W-5**, a nursing home shall be  
 20 concurrently certified for and give evidence of active  
 21 participation in the title 18 program of the social security act,  
 22 ~~42 U.S.C.—USC 1395 to 1395q,~~ **1395KKK-1**. A nursing facility that is  
 23 not concurrently certified for the title 18 program on ~~the~~  
 24 ~~effective date of this section~~ **MARCH 30, 1979** shall make  
 25 application for concurrent certification not later than its next  
 26 application for licensure and certification. A failure to make  
 27 application shall result in the skilled nursing facility being

1 decertified or refused certification as a provider in the title 19  
 2 program. Nursing home or nursing care facility participation in the  
 3 title 18 program under the requirements for concurrent  
 4 certification shall be effective not later than the beginning of  
 5 the first accounting year following the home's or facility's title  
 6 18 certification.

7 (2) As a condition of skilled nursing facility certification,  
 8 a nursing home shall obtain concurrent certification under title 19  
 9 of the social security act, 42 U.S.C. ~~USC~~ 1396 to ~~1396k, 1396W-5,~~  
 10 for each bed ~~which~~ **THAT** is certified to provide skilled care under  
 11 title 18 of the social security act, 42 U.S.C. ~~USC~~ 1395 to ~~1395gg.~~  
 12 **1395KKK-1**. Skilled care certification shall not be renewed unless  
 13 the requirements of this subsection are met.

14 (3) An exception may be made from the requirements of  
 15 subsection (1) for a nursing facility that is currently certified  
 16 as a skilled nursing facility by the director for title 19  
 17 participation but has been determined, after making application, to  
 18 be ineligible for title 18 certification by the secretary of the  
 19 United States department of health ~~, education, and welfare.~~ **AND**  
 20 **HUMAN SERVICES.**

21 (4) A home or facility, or a distinct part of a home or  
 22 facility, certified by the director as a ~~special mental retardation~~  
 23 ~~or special mental illness~~ **OR A SPECIAL DEVELOPMENTAL DISABILITY**  
 24 nursing home or nursing care facility ~~shall be~~ **IS** exempt from the  
 25 requirements of subsection (1).

26 Sec. 21765. (1) A nursing home shall establish written  
 27 policies and procedures to implement the rights protected under

1 section 20201. The policies shall include a procedure for the  
2 investigation and resolution of patient complaints. The policies  
3 and procedures shall be subject to approval by the department. The  
4 policies and procedures shall be clear and unambiguous, shall be  
5 printed in not less than 12-point type, shall be available for  
6 inspection by any person, shall be distributed to each patient and  
7 representative, and shall be available for public inspection.

8 (2) Each patient shall be given a copy of the rights  
9 enumerated in section 20201 at the time of admission to a nursing  
10 home. A patient of a nursing home at the time of the implementation  
11 of this section shall be given a copy of the rights enumerated in  
12 section 20201 as specified by rule.

13 (3) A copy shall be given to a person who executes a contract  
14 pursuant to section 21766 and to any other person who requests a  
15 copy.

16 (4) If a patient is unable to read the form, it shall be read  
17 to the patient in a language the patient understands. In the case  
18 of a ~~mentally retarded~~ **DEVELOPMENTALLY DISABLED** individual, the  
19 rights shall be explained in a manner ~~which~~ that **THE** person is able  
20 to understand and the explanation **SHALL BE** witnessed by a third  
21 person. In the case of a minor or a person ~~having~~ **WHO HAS** a legal  
22 guardian, both the patient and the parent or legal guardian shall  
23 be fully informed of the policies and procedures.

24 (5) A nursing home shall ensure that its staff is familiar  
25 with and observes the rights enumerated in section 20201 and the  
26 policies and procedures established under this section.