

HOUSE BILL No. 5586

May 20, 2014, Introduced by Reps. Yanez, Switalski, Cavanagh, Hovey-Wright, Brown, Segal, Cochran, Haugh, Slavens, Geiss, Roberts, Dianda, Faris, Lane, Durhal and Darany and referred to the Committee on Judiciary.

A bill to amend 1978 PA 368, entitled "Public health code," by amending section 20173a (MCL 333.20173a), 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

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

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

15 (ii) A felony involving cruelty or torture.

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

18 (iv) A felony involving criminal sexual conduct.

19 (v) A felony involving abuse or neglect.

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

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

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

1 completed all of the terms and conditions of his or her sentencing,
2 parole, and probation for that conviction prior to the date of
3 application for employment or clinical privileges or the date of
4 the execution of the independent contract.

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

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

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

19 (iii) A misdemeanor involving criminal sexual conduct.

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

22 (v) A misdemeanor involving abuse or neglect.

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

1 employment or clinical privileges or the date of the execution of
2 the independent contract:

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

5 (ii) A misdemeanor involving home invasion.

6 (iii) A misdemeanor involving embezzlement.

7 (iv) A misdemeanor involving negligent homicide or a violation
8 of section 601d(1) of the Michigan vehicle code, 1949 PA 300, MCL
9 257.601d.

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

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

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

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

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

27 (ii) A misdemeanor of retail fraud in the third degree unless

1 otherwise provided under subdivision (g).

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

4 (g) 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 year 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 under part 74 if the individual, at the time
12 of conviction, is under the age of 18.

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

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

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

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

1 staffing agency has a criminal history check conducted in
2 compliance with this section or has received criminal history
3 record information in compliance with subsections (3) and (10).

4 This subsection and subsection (1) do not apply to any of the
5 following:

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

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

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

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

1 privileges to the applicant shall make a request to the department
2 of state police to conduct a criminal history check on the
3 applicant, to input the applicant's fingerprints into the automated
4 fingerprint identification system database, and to forward the
5 applicant's fingerprints to the federal bureau of investigation.
6 The department of state police shall request the federal bureau of
7 investigation to make a determination of the existence of any
8 national criminal history pertaining to the applicant. The
9 applicant shall provide the department of state police with a set
10 of fingerprints. The request shall be made in a manner prescribed
11 by the department of state police. The staffing agency or covered
12 facility shall make the written consent and identification
13 available to the department of state police. The staffing agency or
14 covered facility shall make a request regarding that applicant to
15 the relevant licensing or regulatory department to conduct a check
16 of all relevant registries established pursuant to federal and
17 state law and regulations for any substantiated findings of abuse,
18 neglect, or misappropriation of property. If the department of
19 state police or the federal bureau of investigation charges a fee
20 for conducting the criminal history check, the staffing agency or
21 covered facility shall pay the cost of the charge. If the
22 department of state police or the federal bureau of investigation
23 charges a fee for conducting the criminal history check, the
24 department shall pay the cost of or reimburse the charge for a
25 covered facility that is a home for the aged. The staffing agency
26 or covered facility shall not seek reimbursement for a charge
27 imposed by the department of state police or the federal bureau of

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

1 staffing agency or covered facility in making its decision
2 regarding his or her employment eligibility based on the criminal
3 history check. The notice shall also include information regarding
4 where to file and describing the appellate procedures established
5 under section 20173b.

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

12 (a) The covered facility requests the criminal history check
13 or criminal history record information under this section upon
14 conditionally employing or conditionally granting clinical
15 privileges to the individual.

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

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

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

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

25 (iv) That he or she agrees that, if the information in the
26 criminal history check conducted under this section does not
27 confirm the individual's statements under subparagraphs (i) to (iii),

1 his or her employment or clinical privileges will be terminated by
2 the covered facility as required under subsection (1) unless and
3 until the individual appeals and can prove that the information is
4 incorrect.

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

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

25 (i) The covered facility, at its own expense and before the
26 individual has direct access to or provides direct services to
27 patients or residents of the covered facility, conducts a search of

1 public records on that individual through the internet criminal
2 history access tool maintained by the department of state police
3 and the results of that search do not uncover any information that
4 would indicate that the individual is not eligible to have regular
5 direct access to or provide direct services to patients or
6 residents under this section.

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

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

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

21 (7) If an individual is employed as a conditional employee or
22 is granted conditional clinical privileges under subsection (5),
23 and the information under subsection (3) or report under subsection
24 (4) does not confirm the individual's statement under subsection
25 (5) (b) (i) to (iii), the covered facility shall terminate the
26 individual's employment or clinical privileges as required by
27 subsection (1).

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

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

27 (10) Upon consent of an applicant as required in subsection

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

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

21 (b) The applicant has been continuously employed by the
22 staffing agency or a covered facility, adult foster care facility,
23 or mental health facility since the criminal history check was
24 conducted in compliance with this section or meets the continuous
25 employment requirement of this subdivision other than being on
26 layoff status for less than 1 year from a covered facility, adult
27 foster care facility, or mental health facility.

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

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

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

18 (b) If a set of fingerprints is not already on file with the
19 department of state police, provide the department of state police
20 with a set of fingerprints.

21 (12) In addition to sanctions set forth in section 20165, a
22 licensee, owner, administrator, or operator of a staffing agency or
23 covered facility who knowingly and willfully fails to conduct the
24 criminal history checks as required under this section is guilty of
25 a misdemeanor punishable by imprisonment for not more than 1 year
26 or a fine of not more than \$5,000.00, or both.

27 (13) In collaboration with the department of state police, the

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

17 (14) The department shall maintain an electronic web-based
18 system to assist staffing agencies and covered facilities required
19 to check relevant registries and conduct criminal history checks of
20 its employees, independent contractors, and individuals granted
21 privileges and to provide for an automated notice to those staffing
22 agencies and covered facilities for those individuals inputted in
23 the system who, since the initial criminal history check, have been
24 convicted of a disqualifying offense or have been the subject of a
25 substantiated finding of abuse, neglect, or misappropriation of
26 property. The department may charge a staffing agency a 1-time set-
27 up fee of up to \$100.00 for access to the electronic web-based

1 system under this section.

2 (15) As used in this section:

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

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

7 (i) For a crime that is not a relevant crime **DESCRIBED UNDER 42**
8 **USC 1320A-7(A)**, a final conviction, the payment of a fine, a plea
9 of guilty or nolo contendere if accepted by the court, or a finding
10 of guilt for a criminal law violation or a juvenile adjudication or
11 disposition by the juvenile division of probate court or family
12 division of circuit court for a violation that if committed by an
13 adult would be a crime.

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

16 (c) "Covered facility" means a health facility or agency that
17 is a nursing home, county medical care facility, hospice, hospital
18 that provides swing bed services, home for the aged, or home health
19 agency.

20 (d) "Criminal history check conducted in compliance with this
21 section" includes a criminal history check conducted under this
22 section, under section 134a of the mental health code, 1974 PA 258,
23 MCL 330.1134a, or under section 34b of the adult foster care
24 facility licensing act, 1979 PA 218, MCL 400.734b.

25 (e) "Direct access" means access to a patient or resident or
26 to a patient's or resident's property, financial information,
27 medical records, treatment information, or any other identifying

1 information.

2 (f) "Home health agency" means a person ~~certified by medicare~~
 3 whose business is to provide **SERVICES** to individuals in their
 4 places of residence other than in a hospital, nursing home, or
 5 county medical care facility ~~1 or more~~ **INCLUDING, BUT NOT LIMITED**
 6 **TO, ANY** of the following: ~~services: nursing~~

7 (i) **NURSING** services. ~~7 therapeutic~~

8 (ii) **THERAPEUTIC** services. ~~7 social~~

9 (iii) **SOCIAL** work services. ~~7 homemaker~~

10 (iv) **HOMEMAKER** services. ~~7 home~~

11 (v) **HOME** health aide services. ~~7 or other~~

12 (vi) **ASSISTANCE WITH ACTIVITIES OF DAILY LIVING.**

13 (vii) **COMPANION CARE SERVICES.**

14 (viii) **CUSTODIAL CARE SERVICES.**

15 (ix) **PRIVATE DUTY CARE SERVICES.**

16 (x) **CONTINENCE CARE SERVICES.**

17 (xi) **OTHER** related services.

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

24 (h) "Medicare" means benefits under the federal medicare
 25 program established under title XVIII of the social security act,
 26 42 USC 1395 to 1395kkk-1.

27 (i) "Mental health facility" means a psychiatric facility or

1 other facility defined in 42 USC 1396d(d) **AND** as described under
2 the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

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

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

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

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

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

16 (B) The tasks performed by the individual.

17 (C) The individual's work schedule.

18 (D) The supervision or evaluation of the individual's work or
19 job performance, including imposing discipline or granting
20 performance awards.

21 (E) The compensation the individual receives for performing
22 his or her duties.

23 (F) The conditions under which the individual performs his or
24 her duties.