

# HOUSE BILL No. 4665

May 19, 2011, Introduced by Rep. Lori and referred to the Committee on Appropriations.

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending section 20173a (MCL 333.20173a), as amended by 2010 PA  
291.

## 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).

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

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

16 (ii) A felony involving cruelty or torture.

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

19 (iv) A felony involving criminal sexual conduct.

20 (v) A felony involving abuse or neglect.

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

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

25 (c) Has been convicted of a felony or an attempt or conspiracy  
26 to commit a felony, other than a felony for a relevant crime  
27 described under 42 USC 1320a-7(a) or a felony described under

1 subdivision (b), unless 10 years have lapsed since the individual  
2 completed all of the terms and conditions of his or her sentencing,  
3 parole, and probation for that conviction prior to the date of  
4 application for employment or clinical privileges or the date of  
5 the execution of the independent contract.

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

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

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

20 (iii) A misdemeanor involving criminal sexual conduct.

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

23 (v) A misdemeanor involving abuse or neglect.

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

1 the 5 years immediately preceding the date of application for  
2 employment or clinical privileges or the date of the execution of  
3 the independent contract:

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

6 (ii) A misdemeanor involving home invasion.

7 (iii) A misdemeanor involving embezzlement.

8 (iv) A misdemeanor involving negligent homicide or a violation  
9 of section 601d(1) of the Michigan vehicle code, 1949 PA 300, MCL  
10 257.601d.

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

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

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

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

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

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

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

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

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

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

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

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

1 residents in the covered facility until the covered facility or  
2 staffing agency has a criminal history check conducted in  
3 compliance with this section or has received criminal history  
4 record information in compliance with subsections (3) and (10).  
5 This subsection and subsection (1) do not apply to any of the  
6 following:

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

1 privileges.

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

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

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

25 (4) Upon receipt of the written consent to conduct a criminal  
26 history check and identification required under subsection (3), a  
27 staffing agency or covered facility that has made a good faith



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

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

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

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

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

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

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

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

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

26 (iv) That he or she agrees that, if the information in the  
27 criminal history check conducted under this section does not

1 confirm the individual's statements under subparagraphs (i) to (iii),  
2 his or her employment or clinical privileges will be terminated by  
3 the covered facility as required under subsection (1) unless and  
4 until the individual appeals and can prove that the information is  
5 incorrect.

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

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

26 (i) The covered facility, at its own expense and before the  
27 individual has direct access to or provides direct services to

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

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

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

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

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

1 subsection (1).

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

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

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

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

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

1 foster care facility, or mental health facility.

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

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

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

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

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



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

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

1 up fee of up to \$100.00 for access to the electronic web-based  
2 system under this section.

3 (15) As used in this section:

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

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

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

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

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

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

26 (e) "Direct access" means access to a patient or resident or  
27 to a patient's or resident's property, financial information,

1 medical records, treatment information, or any other identifying  
2 information.

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

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

15 (h) "Medicare" means benefits under the federal medicare  
16 program established under title XVIII of the social security act,  
17 42 USC 1395 to ~~1395iii~~ **1395KKK**.

18 (i) "Mental health facility" means a psychiatric facility or  
19 intermediate care facility for people with mental retardation under  
20 the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

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

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

27 (i) Determines whether the individual who has access to

1 patients or residents may provide care, treatment, or other similar  
2 support service functions to patients or residents served by the  
3 covered facility.

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

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

7 (B) The tasks performed by the individual.

8 (C) The individual's work schedule.

9 (D) The supervision or evaluation of the individual's work or  
10 job performance, including imposing discipline or granting  
11 performance awards.

12 (E) The compensation the individual receives for performing  
13 his or her duties.

14 (F) The conditions under which the individual performs his or  
15 her duties.