

HOUSE BILL No. 4599

May 3, 2011, Introduced by Reps. Liss, Lane, Bauer, Heise, Kurtz, Rendon, Wayne Schmidt, Jenkins, Farrington, Zorn, Damrow, Haines, Kowall, Callton, O'Brien, Haveman, Forlini, Lyons, Townsend, Darany, Stapleton, Slavens and Brown and referred to the Committee on Families, Children, and Seniors.

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).

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, **OR THE**
23 **SUBJECT OF A SUBSTANTIATED FINDING OF ABUSE CLASS I, ABUSE CLASS**
24 **II, NEGLECT CLASS I, OR NEGLECT CLASS II BY A STATE AGENCY PURSUANT**
25 **TO AN INVESTIGATION CONDUCTED UNDER STATE LAW.**

26 (2) Except as otherwise provided in this subsection or
27 subsection (5), a covered facility shall not employ, independently

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

9 (a) An individual who is employed by, under independent
10 contract to, or granted clinical privileges in a covered facility
11 before April 1, 2006. On or before April 1, 2011, an individual who
12 is exempt under this subdivision and who has not been the subject
13 of a criminal history check conducted in compliance with this
14 section shall provide the department of state police with a set of
15 fingerprints and the department of state police shall input those
16 fingerprints into the automated fingerprint identification system
17 database established under subsection (13). An individual who is
18 exempt under this subdivision is not limited to working within the
19 covered facility with which he or she is employed by, under
20 independent contract to, or granted clinical privileges on April 1,
21 2006 but may transfer to another covered facility, adult foster
22 care facility, or mental health facility. If an individual who is
23 exempt under this subdivision is subsequently convicted of a crime
24 described under subsection (1)(a) to (g) or found to be the subject
25 of a substantiated finding described under subsection (1)(i) or an
26 order or disposition described under subsection (1)(h), or is found
27 to have been convicted of a relevant crime described under 42 USC

1 1320a-7(a), then he or she is no longer exempt and shall be
2 terminated from employment or denied employment or clinical
3 privileges.

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

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

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

27 (4) Upon receipt of the written consent to conduct a criminal

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (7) If an individual is employed as a conditional employee or
25 is granted conditional clinical privileges under subsection (5),
26 and the information under subsection (3) or report under subsection
27 (4) does not confirm the individual's statement under subsection

1 (5)(b)(i) to (iii), the covered facility shall terminate the
2 individual's employment or clinical privileges as required by
3 subsection (1).

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

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

1 compliance with this section or the release of criminal history
2 record information under this subsection.

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

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

24 (b) The applicant has been continuously employed by the
25 staffing agency or a covered facility, adult foster care facility,
26 or mental health facility since the criminal history check was
27 conducted in compliance with this section or meets the continuous

1 employment requirement of this subdivision other than being on
2 layoff status for less than 1 year from a covered facility, adult
3 foster care facility, or mental health facility.

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

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

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

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

24 (12) In addition to sanctions set forth in section 20165, a
25 licensee, owner, administrator, or operator of a staffing agency or
26 covered facility who knowingly and willfully fails to conduct the
27 criminal history checks as required under this section is guilty of

1 a misdemeanor punishable by imprisonment for not more than 1 year
2 or a fine of not more than \$5,000.00, or both.

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

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

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

5 (15) As used in this section:

6 (A) "ABUSE CLASS I", "ABUSE CLASS II", "NEGLECT CLASS I", AND
7 "NEGLECT CLASS II" MEAN THOSE TERMS AS DEFINED IN R 330.7001 OF THE
8 MICHIGAN ADMINISTRATIVE CODE.

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

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

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

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

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

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

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

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

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

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

21 (I) ~~(h)~~—"Medicare" means benefits under the federal medicare
 22 program established under title XVIII of the social security act,
 23 42 USC 1395 to ~~1395iii~~ **1395KKK**.

24 (J) ~~(i)~~—"Mental health facility" means a psychiatric facility
 25 or intermediate care facility for people with mental retardation
 26 under the mental health code, 1974 PA 258, MCL 330.1001 to
 27 330.2106.

1 **(K)** ~~(j)~~—"Staffing agency" means an entity that recruits
 2 candidates and provides temporary and permanent qualified staffing
 3 for covered facilities, including independent contractors.

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

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

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

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

14 (B) The tasks performed by the individual.

15 (C) The individual's work schedule.

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

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

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

23 Enacting section 1. This amendatory act does not take effect
 24 unless all of the following bills of the 96th Legislature are
 25 enacted into law:

26 (a) Senate Bill No. ____ or House Bill No. 4598(request no.
 27 01251'11).

1 (b) Senate Bill No. _____ or House Bill No. 4597 (request no.
2 01253'11).