

Legislative Analysis



HEALTH FACILITIES, AGENCIES, AND OCCUPATIONS: EXPANDED CRIMINAL BACKGROUND CHECKS

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House Bill 5166

Sponsor: Rep. Gary A. Newell

House Bill 5167

Sponsor: Rep. Michael C. Murphy

House Bill 5168

Sponsor: Rep. Paula K. Zelenko

Committee: Senior Health, Security, and Retirement

Complete to 11-28-05

A SUMMARY OF HOUSE BILLS 5166, 5167, AND 5168 AS INTRODUCED 9-13-05

The bills would expand the requirements for criminal background checks for new employees at health facilities and agencies and adult foster care facilities, and for applicants for initial licensure or registration in health occupations. In each case, a request would be made to the Department of State Police to conduct a criminal history check and to forward fingerprints to the Federal Bureau of Investigation. The State Police would have to request the FBI to make a determination of any national criminal history pertaining to the applicant for employment, licensure, or registration.

House Bill 5168 would add a new section to the Public Health Code (MCL 333.1101) to require background checks on new employees of a health facility or agency (a nursing home, county medical facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency). House Bill 5166 would amend the Adult Foster Care Facility Licensing Act (MCL 400.734a) to apply the same requirements to adult foster care facilities. House Bill 5167 would amend the Public Health Code (333.16146 et al.) to apply background check requirements to applicants for initial licensure or registration in health occupations. The bill would impose a nominal fee, beginning January 1, 2006, not to exceed \$2 for the processing of criminal history background checks for applicants for initial licensure or registration and renewals, and the applicants would be responsible for any charges for the criminal history check.

Enacting Sections. House Bills 5166 and 5168 each contain enacting sections that would allow the bills to take effect 60 days after the appropriate state department secures federal approval of the necessary waivers to use federal funds to reimburse health care and adult foster care facilities for the costs incurred in requesting a national criminal history to be conducted by the Federal Bureau of Investigation (FBI) and then files with the Secretary of State a written notice that the approval has been secured. If the department secures the necessary waiver and files a written notice, the existing sections of law dealing with

background checks would be repealed. House Bills 5166 and 5168 are tie-barred to each other.

The following is a more detailed description of the content of the bills.

House Bills 5166 and 5168

Under the bills, health facilities and agencies and adult foster care facilities (to be called "facilities") could not employ, independently contract with, or grant clinical privileges to an individual who regularly has direct access to or provides direct services to patients or residents after the bill's effective date if 1) he or she had been convicted of either a felony or an attempt or conspiracy to commit a felony, unless fifteen years had lapsed since the individual completed all of the terms and conditions of sentencing, parole, or probation prior to application; 2) had been convicted of a misdemeanor that involved abuse, neglect, assault, battery, or criminal sexual conduct or fraud or theft against a vulnerable adult (as defined under the Michigan Penal Code) within the previous ten years; 3) had been convicted of a relevant federal crime; or had been the subject of a substantiated finding of neglect, abuse or misappropriation of property by the department.

Background Checks

A person who applied for employment or contract services or clinical privileges in a facility and had received a good faith offer of employment would have to give written consent along with acceptable identification, at the time of application, for the Department of State Police (DSP) to conduct a criminal history check.

After receiving the written consent form and identification from the applicant, the facility would make it available to the DSP and request a criminal history check on the applicant. The applicant would be required to provide a set of fingerprints to be forwarded to the Federal Bureau of Investigation (FBI). The DSP would request the FBI make a determination of the existence of any national crime history pertaining to the applicant. The facility would request that the DSP conduct a check of all relevant registries established according to federal regulations for any substantial findings of abuse, neglect, or misappropriation of property. The DSP would have to provide the facility with a report containing any criminal history record information on the applicant maintained by the department. The facility would have to bear any cost of the criminal history check, and would be prohibited from seeking reimbursement from the applicant. The DSP would be required to provide the results of the FBI determination to the department within 30 days after the request were made.

If the requesting facility or agency is not a state department or agency and, if the criminal conviction is disclosed on the FBI determination, the department would be required to notify the health facility or agency and the applicant, in writing of the FBI determination without disclosing the details of the criminal conviction. The facility requesting the criminal history check would be responsible for paying fees for the FBI check and could not pass the cost on to the applicant. Further, the notice would also include a statement that the applicant has a right to appeal a decision made by the facility regarding his or

employment eligibility based on the criminal background check. The notice would include information regarding where to file the appeal and information describing the appellate procedures established under this section.

Exceptions. However, these provisions would not apply to individuals who were employed by, under independent contract to, or granted clinical privileges in a facility before the effective date of the bills. Further, those individuals could transfer to another facility without a criminal history check being conducted. If the individual is subsequently convicted of a crime or offense described under the previous subsections, he or she would be subject to the requirements of the subsection and may be denied employment.

In addition, the background check provisions would not apply to individuals who were independent contractors that offered services not directly related to the provision of services to a patient or resident or, if the services do allow for direct access to patients or residents, are not performed on an ongoing basis. The exception includes independent contractors providing utility, maintenance, construction, and communications services.

Conditional Employment

A facility could employ, contract with, or grant clinical privileges to an applicant as a conditional employee before receiving the results of the criminal history check as long as the criminal history check had been requested and the applicant signed a statement that he or she had not been convicted of a felony or the listed misdemeanor offenses; had not been the subject of a substantiated finding of neglect, abuse, or misappropriation of property; that he or she agreed that if the criminal history check did not confirm the applicant's statements, that his or her employment would be terminated; and the providing such incorrect information was a good cause for termination.

If the criminal history report did not confirm a conditionally-employed individual's signed statement, the facility would have to terminate the employment. Knowingly providing false information would constitute a misdemeanor punishable by up to 93 days' imprisonment and a fine of up to \$1,000, or both.

Confidentiality

Information provided on a criminal history record could only be used for evaluating an applicant's qualifications, and a facility would be prohibited from disclosing information to a person who was not directly involved in evaluating the applicant's qualifications. An individual who knowingly disseminates criminal history would be guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000, or both. An applicant who suffers injury as a result of a violation may bring a civil cause of action for damages against the person who committed the violation.

Report to Legislature

Within one year after the effective date of the amendatory act, the department would be required to submit a written report to the Legislature regarding the impact, effectiveness, and the feasibility of implementing criminal history checks on volunteers who work in

facilities who are involved in the licensing health facilities or agencies and regulation of its employees.

Employment Eligibility Appeal Board

Under House Bill 5168, the Department of Community Health would be required to establish an Employment Eligibility Appeals Board consisting of the following gubernatorial appointees: two representatives from the department's Bureau of Health Systems who deal primarily with the licensing of health facilities; two representatives of the Department of Human Services who deal primarily with the licensing of adult foster care facilities and homes for the aged; two members representing the public, and one member each representing providers, organized labor groups, and consumers of long-term care services.

Appeal Board Rules, Procedures, and Fees

The department would be required to promulgate rules for implementation of the Appeals Board and could promulgate rules to provide for an expedited administrative appeals process for certain non-violent crimes. The department could also charge a fee to cover the cost of the appeal.

Appeal Board Hearings

The appeal board would be required to hear and decide applications for appeal from applicants who have been disqualified from or denied employment by a health facility or agency based on a criminal background check conducted pursuant to the previous subsection.

The board would be required hear all appeals within 60 days of receiving the application. If the board finds, upon clear and convincing evidence, that the applicant was wrongly disqualified from or denied employment, it could grant the appellant a certificate of employability. If it deemed necessary, the board could impose conditions or limitations on the certificate to protect the health and safety of patients or residents within a health facility or agency.

Denial of Appeals

An individual convicted of a relevant crime, as described under the Public Health Code, would not have a right to appeal a denial of his or her employment with a health facility or agency. An individual convicted of a felony, (other than that described in the Public Health Code) involving abuse, neglect, assault, battery, criminal sexual conduct, fraud, or theft against a vulnerable adult, as that term is defined in the Michigan Penal Code, or a similar state or federal crime, would not have a right to appeal a denial of his or her employment with a health facility unless three years had elapsed since he or she completed all the sentencing, probation, and parole requirements and restitution for that conviction.

FISCAL IMPACT:

House Bills 5166, 5167, and 5168, as introduced, have fiscal implications for state government.

House Bills 5166 and 5168 will increase costs of certain health facilities due to the imposition of new requirements for employee criminal history checks by the Department of State Police, with notification through the Department of Community Health (DCH). The provisions of the bills will also increase regulatory administrative costs of DCH and Department of Human Services. The Department of Community Health has received a 3-year grant of \$5.0 million to establish this program as a pilot, along with a number of other states, and to reimburse 100% of these costs. Following the grant period, the federal funding is expected to be continued at the 100% reimbursement level, according to DCH.

House Bill 5168 also establishes a new Employment Eligibility Appeal Board, and allows the Department to charge a fee to cover the cost of an appeal.

House Bill 5167 will increase state costs to cover the additional requirement for background checks on new and renewing health care professions licensees or registrants. The bill establishes a maximum \$2.00 applicant fee for administrative processing of this information by the Department of Community Health, and indicates that any charges for fingerprinting or criminal history checks shall be paid for by the applicant.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.