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BILL ANALYSIS



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Senate Bill 621 (as introduced 6-21-05)
Sponsor: Senator Patricia L. Birkholz
Committee: Senior Citizens and Veterans Affairs

Date Completed: 11-29-05

CONTENT

The bill would amend provisions of the Public Health Code that disqualify a person from employment with a nursing home for certain convictions, and that require criminal history checks of applicants for employment, to do the following:

- **Disqualify any individual, rather than a person who provides direct services to patients or residents, from employment if the conditions were met.**
- **Disqualify a person for additional reasons, including involuntary commitment, legal incapacitation, a personal protection order, a finding of not guilty by reason of insanity, a finding of not guilty but mentally ill, and a diagnosis of mental illness.**
- **Require an applicant to consent to annual criminal history checks through the State Police.**
- **Require a nursing home to request the State Police to conduct annual criminal history checks of employees.**
- **Prescribe a felony penalty for a nursing home licensee, owner, administrator, or operator who failed to conduct the required checks.**

Disqualification for Employment

Under the Code, a health facility or agency that is a nursing home, county medical care facility, or home for the aged may not employ, independently contract with, or grant clinical privileges to an individual who regularly provides direct services to patients or residents if he or she has been convicted of one or both of the following:

- A felony or an attempt or conspiracy to commit a felony within the 15 years immediately preceding the date of application for employment or clinical privileges or the execution of the contract.
- A misdemeanor involving abuse, neglect, assault, battery, or criminal sexual conduct, or involving fraud or theft against a vulnerable adult, or a substantially similar State or Federal crime, within the immediately preceding 10 years.

Under the bill, a nursing home, county medical care facility, or home for the aged (referred to as a "facility" below) could not employ, independently contract with, or grant clinical privileges to any individual who had been convicted of an offense described above or who was the subject of an order or disposition under any of the following:

- Section 464a of the Mental Health Code (which requires a court, upon directing an individual to be involuntarily hospitalized or undergo a program of alternative treatment,

to order the State Police to enter that order into the Law Enforcement Information Network (LEIN)).

- Section 5107 of the Estates and Protected Individuals Code (which requires a court, upon finding that an individual is legally incapacitated, to direct the State Police to enter that order into LEIN).
- Sections 2950 and 2950a of the Revised Judicature Act (which provide for domestic personal protection orders (PPOs) and stalking PPOs).
- Section 16b of Chapter IX of the Code of Criminal Procedure (which requires a court, upon finding that a person is not guilty by reason of insanity, to order the State Police to enter that disposition into LEIN).

In addition, a facility could not employ, independently contract with, or grant privileges to an individual who satisfied any of the following:

- Had been found not guilty but mentally ill of any crime and had offered a plea of not guilty of, or been acquitted of, any crime by reason of insanity.
- Had been subject to an order of involuntary commitment in an inpatient or outpatient setting due to mental illness.
- Had a diagnosed mental illness at the time the application was made regardless of whether the person was receiving treatment for that illness.
- Was under a court order of legal incapacity in this State or elsewhere.

Also, in regard to the crimes that disqualify a person from employment, fraud or theft would not be limited to an offense against a vulnerable adult.

Criminal History Checks

Under the Code, an individual who applies for employment as an employee or independent contractor or for clinical privileges with a facility and has received an offer of employment, an independent contract, or clinical privileges, must give written consent at the time of application for the Michigan Department of State Police (MSP) to conduct a criminal history check. If the MSP conducted a criminal history check within 24 months immediately before the date of application and the applicant consents to the release of information, the facility may use the results instead of requesting a new criminal history check.

Under the bill, an applicant for employment or clinical privileges would have to consent to an *annual* criminal history check, and a facility could use the results of a check that had been conducted within the preceding 12 months.

Presently, if an applicant has lived in this State for three or more years before the offer of employment, an independent contract, or clinical privileges, the facility must request the MSP to conduct a criminal history check on the applicant, upon receiving the required consent. The bill would require a facility to request an annual criminal history check.

Under the Code, if an applicant has lived in this State for less than three years, the facility also must request the MSP to forward the applicant's fingerprints to the FBI for a national criminal history check. The bill would retain this requirement.

Conditional Employment

Under the Code, a facility may conditionally employ or grant conditional privileges to an individual before receiving the results of the State Police and/or FBI criminal history check if the facility requests the required criminal history check and the individual signs a statement that he or she has not been convicted of the crimes described above. Under the bill, the statement also would have to indicate that the individual had not been the subject of an

order or disposition and did not fall within any of the categories that would disqualify a person from employment, as described above.

Condition of Continued Employment

The Code requires each individual, independent contractor, or individual granted clinical privileges, as a condition of continued employment, to agree to report to the facility immediately upon being arrested for or convicted of one of the offenses that disqualify a person from employment. The bill would require an individual also to report if he or she become the subject of an order or disposition listed above; had been found not guilty but mentally ill and entered a plea of not guilty of, or been acquitted of, any crime by reason of insanity; or had been subject to an order of involuntary commitment.

In addition, as a condition of continued employment, an individual would have to consent to an annual criminal history check.

Penalty

Under the bill, a licensee, owner, administrator, or operator of a facility who failed to conduct the required criminal history checks would be guilty of a felony punishable by imprisonment for up to four years and/or a maximum fine of \$50,000, in addition to sanctions set forth in the Code. (The present sanctions include the denial, suspension, or revocation of a license or certification, and the imposition of an administrative fine.)

MCL 333.20173

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have a negative indeterminate fiscal impact upon State government. The Department of State Police would see higher administrative costs associated with processing an increased number of State criminal history (name) requests. These costs would be offset by fees charged for the criminal history checks. For-profit organizations are charged \$10 for State criminal history checks; nonprofit and public organizations are exempt from this fee.

The bill would have a negative fiscal impact upon local government. Public nursing homes and county medical care facilities would see increased administrative and fee costs associated with processing criminal history requests for job applicants and current employees.

There are no data to indicate how many facilities would be convicted of the proposed felony for failing to conduct annual criminal history checks. Local government would incur the cost of incarceration in a local facility, which varies by county. The State would incur the cost of felony probation at an average annual cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$30,000. Additional penal fine revenue would benefit public libraries.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.