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SFA**BILL ANALYSIS**

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House Bill 4057 (Substitute H-2 as passed by the House)
Sponsor: Representative Gary Woronchak
House Committee: Senior Health, Security and Retirement
Senate Committee: Health Policy

Date Completed: 4-25-02

CONTENT

The bill would amend the Public Health Code to do the following:

- Prohibit a nursing home, county medical care facility, or home for the aged from employing, contracting with, or granting clinical privileges to an individual who provided direct services to patients or residents, and who had been convicted of any felony, or a misdemeanor that involved certain abuse or theft.**
- Require an employee, contractor, or individual granted clinical privileges to agree, as a condition of employment, to report an arrest for or conviction of certain offenses.**
- Require a facility to request criminal background checks from the State Police, and in certain cases from the FBI, on applicants for employment, contracts, or clinical privileges.**
- Require applicants to give consent for criminal history checks.**
- Allow conditional employment or clinical privileges for applicants before a facility received the results of a criminal history check, under certain conditions.**
- Restrict facilities' use of criminal history checks.**

Prohibited Employment

The bill would prohibit a health facility or agency (under the bill, a nursing home, county medical care facility, or home for the aged) from employing, independently contracting with, or granting clinical privileges to an individual who regularly provided direct services to patients or residents in the facility or agency, after the effective date of the bill, if the individual had been convicted of 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 date of the execution of an independent contract; or a misdemeanor involving abuse, neglect, assault, battery, or criminal sexual conduct or involving fraud or theft against a vulnerable adult (as defined in Section 145m of the Michigan Penal Code), or a State or Federal crime that was substantially similar to such a misdemeanor, within the 10 years immediately preceding the date of an application for employment, clinical privileges, or the execution of the independent contract.

(Under the bill, "independent contract" would mean a contract entered into by a health facility or agency with an individual who provided the contracted services independently, or with an organization or agency that employed or contracted with an individual after complying with the requirements of the bill to provide the contracted services to the health facility or agency on behalf of the organization or agency. Under Section 145m of the Michigan Penal Code, a vulnerable adult is an individual 18 years old or older who, because of age, developmental disability, mental illness, or physical disability requires supervision or care or lacks personal and social skills required to live independently; an adult placed in an adult foster home; or an adult suspected of being abused, neglected, or exploited.)

A facility or agency could not, after the bill's effective date, employ, independently contract with, or grant clinical privileges to an individual who regularly provided direct services to patients or residents until the health facility or agency complied with the criminal background check requirements in the bill. This provision would not apply to an individual who was employed by, under independent contract to, or granted clinical privileges in a facility or agency before the bill's effective date.

As a condition of continued employment, each employee, independent contractor, or individual granted clinical privileges would have to agree in writing to report to the facility or agency immediately upon being arrested for, or convicted of, one or more of the criminal offenses listed in the bill.

Background Checks

An individual who applied for employment as an employee or as an independent contractor, or for clinical privileges with a facility or agency, and who had received a good faith offer of employment, an independent contract, or clinical privileges, would have to give written consent, at the time of application, for the Department of State Police to conduct a criminal history check, along with identification acceptable to the State Police.

If the State Police had conducted a criminal history check on the applicant within the 24 months immediately preceding the date of application and the applicant provided written consent for the release of information for the purposes of the bill, the facility or agency could use a copy of the results of that check instead of obtaining written consent and requesting a new criminal history check. If the applicant were using a prior criminal history check, the facility or agency would have to accept the copy of the results only from the health facility or agency or adult foster care facility that previously had employed or granted clinical privileges to the applicant, or from the firm or agency that independently contracted with the applicant.

Upon receiving the written consent and identification, if the applicant had resided in Michigan for three or more years before the good faith offer, the facility or agency that made the offer would have to make a request to the State Police to conduct a criminal history check on the applicant. The request would have to be made in a manner prescribed by the State Police, and the facility or agency would have to make the written consent and identification available to the State Police. If there were a charge for conducting the criminal history check, the facility or agency would have to pay the cost of the charge, and could not seek reimbursement for it from the individual who was the subject of the criminal history check.

The State Police would have to conduct a criminal history check on the applicant named in the request, and provide the facility or agency with a written report of the criminal history check. The report would have to contain any criminal history record information on the applicant maintained by the State Police. As a condition of employment, the applicant would have to sign a written statement that he or she had been a resident of the State for three or more years preceding the good faith offer.

Upon receiving the required written consent and identification of an applicant who had resided in the State for less than three years preceding an offer, the facility or agency that had made the offer would have to comply with the criminal history check requirements in the bill, and would have to request the State Police to forward the applicant's fingerprints to the FBI. The State Police would have to request the FBI to determine the existence of any national criminal history pertaining to the applicant. An applicant would have to provide the State Police with two sets of fingerprints.

The State Police would have to complete the criminal history check required under the bill and provide the results of its determination to the facility or agency, and the results of the FBI determination to the Department of Consumer and Industry Services (DCIS) within 30 days after the request was made by the facility or agency. If the requesting facility or agency were not a State department or agency, and if the FBI determination disclosed a crime, the DCIS would have to notify the facility or agency in writing of the type of crime without disclosing its details. Any charges for fingerprinting or an FBI determination would have to be paid by the facility or agency, and it could not seek reimbursement from the applicant.

Restrict Uses of Background Checks

A facility or agency could use criminal history record information obtained under the bill only for the purpose of evaluating an applicant's qualifications for employment, an independent contract, or clinical privileges for which he or she had applied, and for other purposes as prescribed in the bill. A facility or agency or an employee of a facility or agency could not disclose criminal history record information to a person who was not directly involved in evaluating the applicant's qualifications for employment, an independent contract, or clinical privileges. Upon written request from another health facility or agency, or an adult foster care facility that was considering employing, contracting with, or granting clinical privileges to an individual, a facility or agency that had obtained criminal history record information on that individual would have to share the information with the requesting health facility or agency or adult foster care facility. Except for a knowing or intentional release of false information, a facility or agency would have no liability in connection with a criminal background check, or the release of criminal history record information.

Conditional Employment or Privileges

If a facility or agency determined it necessary to employ or grant clinical privileges to an applicant before receiving the results of his or her criminal history check, the facility or agency could conditionally employ or grant conditional clinical privileges to the individual if the facility or agency requested the criminal history check upon conditionally employing or conditionally granting clinical privileges to the individual, and the individual signed a statement that indicated all of the following:

- He or she had not been convicted of one or more of the crimes described in the bill, within the applicable time period.
- The individual agreed that, if the information in the criminal history check did not confirm his or her signed statement, the facility or agency would terminate the individual's employment or clinical privileges, unless and until he or she could prove that the information was incorrect. The facility or agency would have to provide a copy of the results of the criminal history check to the applicant upon request.
- The individual understood the conditions that would result in the termination of his or her employment or clinical privileges, and those conditions were good cause for termination.

The DCIS would have to develop and distribute a model form for the statement, and make it available to facilities or agencies upon request, at no charge.

If an individual were employed as a conditional employee or were granted conditional clinical privileges and the required criminal history report did not confirm his or her required statement, the facility or agency would have to terminate the individual's employment or clinical privileges.

An individual who knowingly provided false information regarding criminal convictions on the required statement would be guilty of a misdemeanor punishable by imprisonment for up to 90 days, a fine of up to \$500, or both.

FISCAL IMPACT

Department of Consumer and Industry Services. Staff from the Department of Consumer and Industry Services have indicated that cost increases to the Department under the bill would be minimal.

State Police. The bill would have a minimal fiscal impact on the Department of State Police. The Department would be required to provide certain criminal history background checks under the bill. These background checks have fees attached to them (\$15 for a name check, \$30 for a State fingerprint check, and \$24 for a Federal fingerprint check), which would be payable to the Department to cover its actual cost of providing criminal history background checks.

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