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BILL ANALYSIS



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Senate Bill 1161 (Substitute S-1 as reported)  
Sponsor: Senator Patricia L. Birkholz  
Committee: Health Policy

(as enacted)

Date Completed: 3-19-08

### **RATIONALE**

In response to concerns that patients in long-term care facilities were at risk of victimization by employees with criminal histories, legislation was enacted to require applicants for employment at these facilities to submit their fingerprints for a criminal history check, beginning April 1, 2006. Existing employees were given an additional two years to submit their fingerprints. The costs of conducting the checks on the "grandfathered" employees were to be covered by funding available through a Federal pilot program. This money, however, has run out and the fingerprinting of these employees was suspended. It has been suggested that the deadline be delayed by one year so that another funding source can be found.

Under the Code, subject to specific exceptions, a health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency may 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 if he or she has been convicted of a specified crime. Additionally, these health facilities may not employ, independently contract with, or grant privileges to an individual without conducting a criminal history check, subject to certain exceptions. (For more information regarding the required criminal history checks, please see **BACKGROUND**, below.)

### **CONTENT**

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

- Delay for one year the deadline by which employees of specified types of health facilities and agencies must submit fingerprints to the Michigan State Police (MSP) for a background check.**
- Require the Department of Community Health (DCH) and the MSP to maintain, rather than develop and implement, an electronic web-based system to assist health facilities and agencies in identifying individuals who are convicted of offenses disqualifying them for employment.**

These provisions do not apply to an individual who was employed by, under independent contract to, or granted clinical privileges in a health facility or agency before April 1, 2006. An individual exempt under this provision must provide the MSP with a set of fingerprints by April 1, 2008. The MSP must enter the fingerprints into the automated fingerprint identification system (described below). The bill would delay the deadline until April 1, 2009.

The Code required the DCH and the MSP, by March 1, 2007, to develop and implement an electronic web-based system to assist the specified health facilities and agencies required to check relevant registries and conduct criminal history checks of their employees and independent contractors, and to provide for an automated notice to those facilities and agencies for individuals entered

in the system who, since the initial check, have been convicted of a disqualifying offense or have been the subject of a substantiated finding of abuse, neglect, or misappropriation of property. The bill would require the DCH and the MSP to maintain, rather than develop and implement, the web-based system.

MCL 333.20173a

## **BACKGROUND**

Under the Public Health Code, if an applicant for employment with a long-term health facility or agency has received a good faith offer of employment, he or she must give written consent at the time of application for the Michigan State Police to conduct an initial criminal history check, along with identification. Upon receiving the consent and identification, the health facility or agency must request that the MSP conduct the criminal history check, enter the applicant's fingerprints into the automated fingerprint identification system database, and forward the fingerprints to the Federal Bureau of Investigation (FBI). The MSP must request the FBI to determine the existence of any national criminal history pertaining to the applicant. Additionally, the health facility or agency must make a request to the relevant licensing agency or regulatory department to conduct a check of all relevant registries established pursuant to Federal and State law and regulations for any substantiated findings of abuse, neglect, or misappropriation of property.

The MSP must conduct a criminal history check and give the Department of Community Health a report of the check if it contains any criminal history record information. The report must contain any criminal history record information on the applicant maintained by the MSP. The MSP must provide the results of the FBI determination within 30 days after the request is made. If the requesting health facility or agency is not a State department or agency and if a criminal conviction is disclosed on the criminal history check report or FBI determination, the DCH must notify the health facility or agency and the applicant in writing of the type of crime disclosed without disclosing the details of the crime. The notice must include a statement that the applicant has a right to appeal a decision made by the health facility

or agency regarding his or her employment eligibility based on the criminal background check.

As a condition of employment, each employee, independent contractor, or individual granted clinical privileges must give the MSP a set of fingerprints, if one is not already on file. Additionally, each person must agree in writing to report to the health facility or agency immediately upon being arraigned for one or more of the criminal offenses specified in the Code, upon being convicted of one or more of those offenses, upon becoming the subject of an order or disposition described in the Code, and upon being the subject of a substantiated finding of neglect, abuse, or misappropriation of property. The reporting of an arraignment is not cause for termination or denial of employment.

In addition to sanctions set forth in the Code, a licensee, owner, administrator, or operator of any of the specified facilities who knowingly and willfully fails to conduct the criminal history checks is guilty of a misdemeanor punishable by imprisonment for up to one year and/or a maximum fine of \$5,000.

The Code required the Department of Information Technology, in collaboration with the MSP, to establish an automated fingerprint identification system database that would allow the MSP to store and maintain all of the submitted fingerprints and would provide for an automatic notification if and when a subsequent criminal arrest fingerprint card submitted into the system matches a set of fingerprints submitted previously. Upon a notification, the MSP immediately must notify the DCH, which immediately must contact the respective health facility or agency with which the individual is associated.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Reportedly, as of June 2007, approximately 4,000 applicants for employment in long-term care facilities were deemed unemployable because of criminal histories discovered through the background checks.

It is critical for the safety and well-being of patients that previously grandfathered employees now be fingerprinted and their prints entered into the automated system as soon as possible; however, there is no more Federal funding available to cover the fingerprinting costs. By extending the deadline for one year, the bill would allow more time for an alternative funding mechanism to be identified and implemented.

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

It should be noted, however, that the FY 2008-09 Executive budget recommendation proposes transferring the cost of background checks to the facilities required to conduct such screenings, with the exception of adult foster care homes and homes for the aged. This proposed change would require statutory changes and would require facilities to cover charges totaling approximately \$3.1 million.

Fiscal Analyst: Matthew Grabowski

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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.