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BILL ANALYSIS

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House Bill 5894 (as passed by the House)
Sponsor: Representative Shanelle Jackson
House Committee: Families and Children's Services
Senate Committee: Families and Human Services

Date Completed: 4-28-08

CONTENT

The bill would amend the Adult Foster Care Facility Licensing Act to do the following:

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

Under the Act, subject to specific exceptions, an adult foster care facility may not employ or independently contract with an individual who regularly has direct access to or provides direct services to patients or residents if he or she has been convicted of certain crimes. Additionally, an adult foster care facility may not employ or independently contract with an individual who has direct access to residents without conducting a criminal history check, subject to certain exceptions. (For more information regarding the required criminal history checks, please see **BACKGROUND**, below.)

These provisions do not apply to an individual who was employed by or under independent contract to an adult foster care facility 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. The bill would delay the deadline until April 1, 2009.

The Act required the DHS and the MSP, by March 1, 2007, to develop and implement an electronic web-based system to assist the adult foster care facilities required to check relevant registries and conduct criminal history checks of their employees and independent contractors, and to provide for an automated notice to the facilities 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 DHS and the MSP to maintain, rather than develop and implement, the web-based system.

MCL 400.734b

BACKGROUND

Public Act 29 of 2006, which took effect on April 1, 2006, amended the Adult Foster Care Facility Licensing Act to establish the criminal background check requirements. Under the Act, an applicant for employment as either an employee of or an independent contractor with an adult foster care facility who has received a good faith offer of employment must give written consent at the time of application for the MSP to conduct an initial criminal history check, along with identification. Upon receiving the consent and identification, the adult foster care facility 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 adult foster care facility 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 DHS 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 facility is not a State department or agency and if a criminal conviction is disclosed on the criminal history check report or FBI determination, the DHS must give the facility and the applicant written notice of the type of crime disclosed without disclosing its details. The notice must include a statement that the applicant has a right to appeal a decision made by the facility regarding his or her employment eligibility based on the criminal background check.

As a condition of employment, each employee or independent contractor 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 adult foster care facility immediately upon being arraigned for one or more of the criminal offenses specified in the Act, upon being convicted of one or more of those offenses, upon becoming the subject of an order or disposition described in the Act, and upon being the subject of a substantiated finding of neglect, abuse, or misappropriation of property.

In addition to sanctions set forth in the Act, a licensee, owner, administrator, or operator of an adult foster care facility 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 Act 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 DHS, which immediately must contact the adult foster care facility with which the individual is associated.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

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

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.