



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 4325 (Substitute H-1 as passed by the House)
Sponsor: Representative Matt Hall
House Committee: Families, Children, and Seniors
Senate Committee: Families, Seniors, and Veterans

Date Completed: 5-18-21

CONTENT

The bill would amend the Older Michiganians Act to do the following:

- **Require each area agency on aging to conduct a criminal background check that revealed information similar to that found in an Internet Criminal History Access Tool (ICHAT) check for each new employee, employee, subcontractor, subcontractor employee, or volunteer who had in-person client contact, in-person home client contact, access to a client's personal property, or access to confidential client information, beginning October 1, 2020.**
- **Specify that a criminal background check for a new hire or new employee would have to be completed before the individual began working directly with a client or had access to a client's personal property or confidential client information.**
- **Require each area agency on aging to update criminal background checks for all employees and volunteers every three years.**
- **Specify that an employee hired before or a volunteer who started volunteering before October 1, 2020, would have to be screened within 90 days after the bill's effective date, unless the agency had conducted a criminal background check that met the bill's requirements.**
- **Prohibit an employee from being permitted to work directly with a client or having access to a client's personal property or confidential client information if the result of the criminal background check showed certain convictions prescribed by the bill.**
- **Require each area agency on aging to maintain documentation of all criminal background checks.**

The bill specifies that it is intended to be retroactive and would apply retroactively beginning October 1, 2020.

The Act creates the Commission on Services to the Aging and prescribes the Commission's duties, including designating planning and service areas in the State and an agency that must be recognized as an area agency on services to the aging within each planning and service area. The Act specifies that an area agency on aging has the authority to serve as an advocate for aging and older individuals, to assess the services needed by older individuals in the planning and service area, and to enter into subcontracts with local organizations for the direct provision of services to meet the priority needs of older individuals.

Under the bill, beginning October 1, 2020, each area agency on aging would have to conduct or cause to be conducted a criminal background check that revealed information similar or

substantially similar to information found on an ICHAT check and a national and State sex offender registry check for each new employee, employee, subcontractor, subcontractor employee, or volunteer who had in-person client contact, in-home client contact, access to a client's personal property, or access to confidential client information.

A criminal background check for a new hire or new volunteer would have to be completed before the individual began working directly with a client or had access to a client's personal property or confidential client information. Each area agency on aging would have to update criminal background checks for all employees and volunteers every three years to identify a conviction in the event a conviction occurred while an individual was employed or providing volunteer service.

An employee hired before or a volunteer who started volunteering before October 1, 2020, would have to be screened within 90 days after the bill's effective date, unless the area agency on aging had conducted a criminal background check that met the requirements described above on or after October 1, 2020. After that, a criminal background check for each employee and volunteer would have to be completed within 30 days after every third anniversary from the date of his or her last background check. An updated criminal background check for each employee hired, or volunteer who started volunteering, on or after October 1, 2020, would have to be completed within 30 days after every third anniversary of the employee's date of hire or volunteer's start date.

The bill specifies that information obtained from a criminal background check could be used only to determine suitability for employment or volunteer opportunities. Each area agency on aging would have to maintain a copy of the results of each criminal background check for paid and volunteer staff in a confidential and controlled access file. The information could not be used in violation of applicable Federal or State equal employment opportunity law or regulation.

An employee or volunteer would be prohibited from working directly with a client or having access to a client's personal property or confidential client information if the results of the criminal background check showed that the individual had a Federal or State felony conviction related to one or more of the following crimes:

- A crime against a vulnerable adult as set forth in Chapter 20A (Vulnerable Adults) of the Michigan Penal Code.
- A violent crime, including murder, manslaughter, kidnapping, arson, assault, battery, or domestic violence.
- A financial crime, including fraud, forgery, counterfeiting, embezzlement, or tax evasion.
- A sex crime, including rape, sexual abuse, criminal sexual conduct, or prostitution.
- Cruelty or torture.
- Abuse or neglect.
- Felony involving the use of a firearm or dangerous weapon.

In addition, an employee or volunteer would be prohibited from working directly with a client or having access to a client's personal property or confidential client information if the results of the criminal background check showed that the individual had a Federal or State felony conviction within the preceding 10 years from the date of the criminal background check, including one or more of the following:

- A crime involving a State, Federal, or local government assistance program.
- A theft crime, including larceny, burglary, robbery, extortion, false pretenses, false representation, or conversion.
- A drug crime, including possession, delivery, or manufacturing.

Also, the prohibition above would apply if the results of the criminal background check showed that the individual had a Federal or State misdemeanor conviction within the preceding five years from the date of the criminal background check, including one or more of the following:

- A crime involving a State, Federal, or local government assistance program.
- A crime against a vulnerable adult as set forth in Chapter 20A of the Michigan Penal Code.
- A financial crime, including fraud, forgery, counterfeiting, embezzlement, or tax evasion.
- A theft crime, including larceny, burglary, robbery, extortion, false pretenses, false representation, or conversion.
- A sex crime, including rape, sexual abuse, criminal sexual conduct, or prostitution.
- A drug crime, including possession, delivery, or manufacturing.
- Cruelty or torture.
- Abuse or neglect.
- Assault or battery.
- A misdemeanor involving the use of a firearm or dangerous weapon with intent to injure, using a firearm or dangerous weapon that results in a personal injury, or using force or violence or the threat of using force or violence.

(Chapter XXA of the Michigan Penal Code provides the circumstances under which a caregiver or other person with authority over a vulnerable adult is guilty of vulnerable adult abuse in the first, second, third, or fourth degree, among other violations.)

For the purposes of the excluded offenses identified above, an individual would be considered to have been convicted of a criminal offense if one of the following occurred:

- A judgment of conviction had been entered against the individual by a Federal, State, Tribal, or local court regardless of whether there was an appeal pending.
- There had been a finding of guilt against the individual by a Federal, State, Tribal, or local court.
- A plea of guilty or nolo contendere by the individual had been accepted by a Federal, State, Tribal, or local court.

An arrest record alone would not disqualify an individual from employment with or volunteering at an area agency on aging.

Each area agency on aging would have to maintain documentation of all criminal background checks, including a list of all paid volunteer staff that were subject to the bill's provisions, the date of the most recently completed criminal background check, and the source of the criminal background check. An employee hired before October 1, 2020, would not be exempt from the bill's requirements.

BACKGROUND

On August 21, 2020, the Michigan Department of Health and Human Services (DHHS) Aging and Adult Services Agency (AASA) announced the establishment of more stringent guidelines on background checks for employees and volunteers of Michigan's 16 area agencies on aging. The guidelines provided the types of allowable exceptions and frequency of repeated criminal background checks, which apparently varied across the different area agencies on aging. The guidelines took effect October 1, 2020, and the bill's provisions would codify them.

For the fiscal year (FY) 2019-20 the area agencies on aging reported total expenditures of \$450,958,020 for administrative services, direct services, and contractual/subcontractual services. Although the area agencies on aging are funded through multiple sources, including

Federal and Local funds, they report that funding from the State totaled \$148,031,434 in FY 2019-20.

Proposed MCL 400.586I

Legislative Analyst: Tyler VanHuyse

FISCAL IMPACT

The bill would have an indeterminate negative fiscal impact on the Department of Health and Human Services (DHHS) and no fiscal impact on local units of government. The increase in costs to the DHHS would result from additional administrative review requirements during field assessments to ensure that the area agencies on aging are complying with the more stringent background checks.

A fingerprint-based criminal history background check currently costs \$43.25 (\$30 for a State history check and \$13.25 for a Federal history check). Nonfingerprint background checks can be conducted without charge through the publicly accessible ICHAT and other registries.

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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.