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CRIMINAL CHECKS ON NURSING HOME EMPLOYEES

House Bill 5774

Sponsor: Rep. Eileen DeHart

**Committee: Senior Health, Security and
Retirement**

Complete to 7-19-00

A SUMMARY OF HOUSE BILL 5774 AS INTRODUCED 5-11-00

The bill would amend Part 201 of Article 17 of the Public Health Code, which regulates health facilities and agencies, to require background checks on employees of nursing homes, county medical facilities, and homes for the aged. Under the bill, a nursing home, county medical facility, or home for the aged could not employ, grant clinical privileges to, or independently contract with an individual who would be providing direct services to patients or residents after the bill's effective date if he or she had been convicted in Michigan of either a felony or an attempt or conspiracy to commit a felony within the previous fifteen years, or a misdemeanor that involved abuse, neglect, assault, battery, or criminal sexual conduct or fraud or theft against a vulnerable adult (as defined under the Michigan Penal Code) within the previous ten years. This provision would also apply to current employees rendering direct services to patients, except the 15-year and 10-year look back would be from the date that the employee had a criminal background check performed under the bill's requirements.

Under the bill, a nursing home, county medical care facility, or home for the aged would be prohibited from employing, contracting with, or granting privileges to an individual without first running a criminal history check on the person. However, this prohibition, and the provision pertaining to individuals convicted of the above mentioned crimes, would not apply to current employees who had a criminal background check done within the two years prior to the bill's effective date. (Note: As written, it is not clear whether current employees would be grandfathered under the bill.) Any applicant for employment, contract services, or clinical privileges in a nursing home, county medical facility, or home for the aged would first have to give written consent for the Department of State Police (DSP) or other authorized law enforcement agency to conduct a criminal history check. If a criminal history check had been performed on the applicant within the previous six months, a certified copy of the criminal history check could be used in lieu of obtaining written consent and requesting a new check. After receiving the signed consent form from the applicant, the facility would have to request the DSP or other agency to conduct a criminal history check on the applicant. The facility would have to bear any cost of the criminal history check, and would be prohibited from seeking reimbursement from the applicant. The law enforcement agency conducting the check would have to provide the facility with a report containing any criminal history record information on the applicant maintained by the agency. Further, each report would have to be certified with an official seal or other symbol of authenticity.

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A nursing home, county medical facility, or home for the aged could employ or grant clinical privileges to an applicant as a conditional employee or staff member before receiving the results of the criminal history check as long as the criminal history check had been requested and the applicant signed a statement that he or she had not been convicted of the types of felony or misdemeanor offenses previously mentioned. The Department of Consumer and Industry Services (DCIS) would have to develop and distribute a model form for the statement of prior criminal convictions at no cost to facilities. If a criminal history check revealed information that was substantially different from the applicant's statement, the person's employment could be terminated by the facility. Knowingly providing false information would constitute a misdemeanor punishable by 90 days imprisonment and a fine of up to \$500, or both.

Information provided on a criminal history record could only be used for evaluating an applicant's qualifications, and a facility would be prohibited from disclosing information to a person who was not directly involved in evaluating the applicant's qualifications for employment or clinical privileges.

A nursing home, county medical care facility, or home for the aged would be required to report to the Department of Consumer and Industry Services the criminal history information obtained under the bill, and any other criminal history information regarding a person employed by, under contract to, or granted clinical privileges by the agency. In addition, all health facilities and agencies regulated under the code, including medical first response services, clinical laboratories, hospitals, nursing homes, hospices, and homes for the aged, would have to report to the DCIS any final disciplinary action taken by a facility against an employee that involved sexual or other abuse, neglect, physical harm, theft, or fraudulent behavior against a patient of the facility, and all criminal history information obtained under the bill. (This report would be in addition to a report currently required regarding disciplinary actions against employees licensed or registered under the code). Such a report, as well as reports currently required by law regarding licensed and registered employees, would be public information. Further, failure to report under either of these requirements would be added to the list of actions that can result in the denial, limitation, suspension, or revocation of a facility's or agency's license or certification.

The bill would take effect July 1, 2000.

MCL 333.20165 and 333.20175.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.