



House Office Building, 9 South  
Lansing, Michigan 48909  
Phone: 517/373-6466

## CRIMINAL BACKGROUND CHECKS ON HOME HEALTH CARE PROVIDERS

**House Bill 4880**

**Sponsor: Rep. Paul Gieleghem**

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

**Complete to 8-1-01**

### **A SUMMARY OF HOUSE BILL 4880 AS INTRODUCED 6-5-01**

The bill would amend add a new Article 16 and Part 191 to the Public Health Code (MCL 333.19101 et al.) to require criminal background checks on home health services providers (persons who regularly provide direct health services to patients in the patients' homes). A health care provider (defined as a health professional, health facility or agency, or local health department) could not employ or independently contract with a home health care provider after the bill's effective date if the home health services provider had been convicted of either:

- a felony, or an attempt or conspiracy to commit a felony, within the previous fifteen years, or, for individuals employed as of the effective date of the bill, within the fifteen years immediately preceding the person's most recent criminal history check performed under the bill; 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, or, for individuals employed as of the effective date of the bill, within the ten years immediately preceding the person's most recent criminal history check performed under the bill.

Further, a health care provider would be prohibited from employing or contracting with a home health services provider without first running a criminal history check on the person. However, these provisions would not apply to a person who was employed by or under contract to the health care provider on the effective date of the bill if the home health care services provider has had a criminal background check performed within the previous two years.

A home health services provider who applied for employment either as an employee or as an independent contractor with a health care provider would have to give written consent at the time of application for the Department of State Police or another 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. However, if an independent contractor were using a prior criminal history check, the health care provider could only accept the certified copy of the previous criminal history check directly from the previous employer or the law enforcement agency.

House Bill 4880 (8-1-01)

After receiving the signed consent form from the applicant, the health care provider would have to request the state police or other law enforcement 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 state police or other law enforcement agency would have to provide the facility with a report containing any criminal history record information on the applicant maintained by the agency. Each report would have to be certified with an official seal or other symbol of authenticity.

A health care provider could employ or contract with an applicant as a conditional employee 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 a felony or the listed misdemeanor offenses; and that he or she agreed that if the criminal history check was not the same as the applicant's statements, that his or her employment could be terminated. Within 90 days after the effective date of the bill, the Department of Consumer and Industry Services would have to develop and distribute a model form for this statement at no cost to health care providers. If the criminal history report was substantially different than the conditionally-employed individual's signed statement, the health care provider could terminate the person's employment. 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. However, a health care provider would be required to report any criminal history information obtained about an applicant or employee to the Department of Consumer and Industry Services. Further, a provider would have to report to the DCIS, within 30 days, any disciplinary action taken against a home health services provider based upon the provider's professional competence, disciplinary action taken that results in a change of employment status, or a case in which a provider resigns or terminates a contract, or whose contract is not renewed, as an alternative to disciplinary action.

Upon the request of another health care provider seeking a reference, a health care provider would have to notify the requesting provider of disciplinary or other action taken against a home health services provider that involved sexual or other abuse, neglect, physical harm, theft, or fraudulent behavior against a patient, as well as all criminal history information. This requirement would be in addition to reporting such information to the DCIS.

For purposes of reporting disciplinary actions according to the bill, a health care provider would include only the name of the home health services provider, a description of the disciplinary action taken, the specific grounds for the disciplinary action, and the date of the incident that is the basis for the action.

A report made to the Department of Consumer and Industry Services under the bill would be public information.

Analyst: D. Martens

■ 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.