

House Bills 5034 and 5035
Sponsor: Rep. Lingg Brewer
Committee: Health Policy

Complete to 10-24-00

A SUMMARY OF HOUSE BILLS 5034 AND 5035 AS INTRODUCED 10-26-99

The bills would amend the Adult Foster Care Facility Licensing Act and the Mental Health Code to require background checks on employees. The bills would take effect January 1, 2000. House Bills 5034 and 5035 are tie-barred to each other and to House Bill 5033, which would place similar provisions in the Public Health Code to apply to employees of nursing homes, county medical care facilities, and homes for the aged. Specifically, the bills would do the following:

House Bill 5035 would amend the Mental Health Code (MCL 330.1137b) to require criminal background checks of new employees. Under the bill, a mental health facility could not employ, grant clinical privileges to, or independently contract with an individual who provided direct services to patients or residents of a psychiatric hospital, psychiatric unit, or psychiatric partial hospital program 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 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), 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. The bill's provisions would not apply to a person employed by, under contract to, or having clinical privileges prior to the bill's effective date.

Under the bill, any applicant for employment, contract services, or clinical privileges in a mental health facility 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. A facility would be prohibited from employing, contracting with, or granting privileges to an individual without first running a criminal history check on the person. 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 applicant would have to bear any cost of the criminal history check. 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.

If a criminal history check had been conducted on an applicant within the previous six months, the mental health facility could use a certified copy of that criminal history check in lieu of obtaining written consent and requesting a new criminal history check. If the applicant was applying for employment as an independent contractor and would be using a prior criminal history check, the mental health facility could only accept the certified copy of the criminal history check from the firm or agency that employed the individual or from the DSP. The DSP would also have to certify each report with an official seal or other symbol of authenticity.

A mental health facility 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 crimes described in the bill and that employment could be terminated if the criminal history check differed from the signed statement. The Department of Community Health, in cooperation with the Department of Consumer and Industry Services (DCIS), would have to develop and distribute a model form for the required statement at no cost to facilities. A conditional employee whose information on the statement form differed from the criminal history check could be terminated by the facility. Knowingly providing false information regarding criminal convictions 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.

House Bill 5034 would place similar provisions in the Adult Foster Care Facility Licensing Act (MCL 400.734a). The model form for the statement required for conditional employment would have to be developed by the Family Independence Agency in cooperation with the Departments of Community Health and Consumer and Industry Services.

Analyst: S. Stutzky

#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.