



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bills 66, 67, and 68 (as introduced 1-26-17)
Sponsor: Senator Hoon-Yung Hopgood
Committee: Health Policy

Date Completed: 10-31-17

CONTENT

Senate Bills 66, 67, and 68 would amend the Public Health Code, the Mental Health Code, and the Adult Foster Care Facility Licensing Act, respectively, to delete provisions allowing various types of facilities to grant conditional employment or clinical privileges to an individual before receiving that individual's criminal history check or criminal history record information.

Senate Bill 66 would apply to a covered facility (a health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency). Senate Bill 67 would apply to a psychiatric facility and an intermediate care facility for mentally retarded. Senate Bill 68 would apply to an adult foster care facility. (Each of these types of facilities is referred to below as a "facility".)

Currently, except as otherwise provided, a facility may not employ, independently contract with, or grant clinical privileges to an individual who regularly has direct access to or provides direct services to patients or residents in the facility until the facility or a staffing agency has a criminal history check conducted or has received criminal history record information.

An individual who applies for employment as an employee or independent contractor or for clinical privileges with a facility or a staffing agency and who has not been the subject of a criminal history check must give written consent at the time of application for the Michigan State Police (MSP) to conduct a criminal history check.

If the applicant has been the subject of a criminal history check, he or she must give written consent at the time of application for the facility or staffing agency to obtain his or her criminal history record information from the relevant licensing or regulatory department and for the MSP to conduct a criminal history check if the applicant does not meet requirements regarding a previous check, continuous employment, and Michigan residency and a request to the FBI for a determination of any national criminal history pertaining to the applicant is necessary.

Upon receiving the written consent, the staffing agency or facility that has made a good faith offer of employment, an independent contract, or clinical privileges to the applicant must request the criminal history record information from the relevant licensing or regulatory department and request it to conduct a check of all relevant registries established under Federal and State law for any substantiated findings of abuse, neglect, or misappropriation of property regarding that applicant.

If a facility determines that it necessary to employ or grant clinical privileges to an applicant before receiving the results of the applicant's criminal history check, the facility may

conditionally employ or grant privileges to the person if the facility and the individual meet the conditions described below.

The facility must request the criminal history check or criminal history record information upon conditionally employing or granting clinical privileges to the individual.

The individual must sign a written statement indicating all of the following:

- He or she has not been convicted of one or more of the crimes under Federal law that exclude certain individuals and entities from participation in Medicare and State health care programs; or convicted of a specified felony or misdemeanor.
- He or she is not subject to an order of disposition regarding a finding of not guilty by reason of insanity.
- He or she has not been the subject of a substantiated finding of neglect, abuse, or misappropriation of property by a State or Federal agency.
- He or she agrees that, if the information in the criminal history check does not confirm the individual's statements, his or her employment or clinical privileges will be terminated by the facility unless the individual appeals and can prove that the information is correct.
- He or she understands that the conditions described above may result in the termination of his or her employment or clinical privileges and that those conditions are good cause for termination.

The facility may not permit the individual to have regular direct access to or provide direct services to patients or residents without supervision until the criminal history check or criminal history record information is obtained and the individual is eligible for the employment or privileges. If required, the facility must provide on-site supervision of an individual in the facility on a conditional basis by someone who has undergone a criminal history check. The facility may permit the individual to have regular direct access to or provide direct services to patients or residents without supervision if all of the conditions described below are met:

- At its own expense and before the individual has direct access or provides direct services to patients or residents, the facility conducts a search of public records on that individual through the MSP's internet criminal history access tool, and the results do not uncover any information that would indicate that the individual is not eligible to have regular direct access or provide direct services to patients or residents.
- Before the individual has direct access or provides direct services to patients or residents of the facility, the individual signs a written statement that he or she has resided in the State without interruption for at least the immediately preceding 12-month period.
- If applicable, the individual gives the MSP a set of fingerprints within 10 business days after the date he or she was conditionally employed or granted conditional privileges.

The Department must develop and distribute a model form for the statement required for conditional employment and must make the form available to facilities at no charge.

If an individual is employed as a conditional employee or is granted conditional clinical privileges and the criminal history check or criminal history record information does not confirm the individual's statement, the facility must terminate the individual's employment or clinical privileges.

An individual who knowingly provides false information regarding his or her identity, criminal convictions, or substantiated findings on his or her statement is guilty of a misdemeanor punishable by imprisonment for up to 93 days, a maximum fine of \$500, or both.

The bills would delete all of the provisions concerning conditional employment or privileges.

Each bill would take effect 90 days after its enactment.

MCL 333.20173a & 333.20173b (S.B. 66)
330.1134a (S.B. 67)
400.704 & 400.734b (S.B. 68)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

SAS\S1718\s66sa

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.