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**SB0054: Occupational Licensing and Certification –  
Criminal History – Prohibited Disclosures and  
Predetermination Review Process**

Finance Committee

February 7, 2024

**Letter of Information**

The Arc Maryland is the largest statewide advocacy organization dedicated to protecting and advancing the rights and quality of life of people with intellectual and developmental disabilities.

SB0054 proposes to alter certain provisions of law regarding the prohibition on certain departments of State government from denying an occupational license or certificate to an applicant solely on the basis of the criminal history of the applicant, by prohibiting a department from requiring disclosure of certain actions on an application and establishing a predetermination review process.

The organizations of The Arc in Maryland directly support over 5,000 individuals with intellectual and developmental disabilities across the state through DDA's Community Pathways, Community Supports, and Family Supports 1915C Waivers. The individuals we support frequently come into contact with Occupational, Physical, and Speech therapists for assistance with eating mechanics, speaking, movement, and mobility and other activities of daily living.

We have concerns about the inconsistency in standards, for "passing a background check," that are currently required through our waivers to protect vulnerable individuals, and approved federally, and the standard that would be created through this bill.

Current Medicaid Waiver Regulations require specific providers have criminal background checks prior to services delivery. DDA's regulations also require that each DDA-licensed and DDA-certified community-based provider complete either: (1) a State criminal history records check via the Maryland Department of Public Safety's Criminal Justice Information System; or (2) a National criminal background check via a private agency, with whom the provider contracts.

*If the provider chooses the second option, the criminal background check must pull court or other records "in each state in which [the provider] knows or has reason to know the eligible employee [or contractor] worked or resided during the past 7 years." The same requirements are required for participants self-directing services as indicated within each service qualification. The DDA-licensed and certified provider must complete this requirement for all of the provider's employees and contractors hired to provide direct care. **If this background check identifies a criminal history that "indicate[s] behavior potentially harmful" to participants receiving services, then the provider is prohibited from employing or contracting with the individual.** See Code of Maryland Regulations*



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*(COMAR) 10.22.02.11, Maryland Annotated Code Health-General Article § 19-1901 et seq., and COMAR Title 12, Subtitle 15. COMAR 10.22.02.11B also provides the DDA discretion to prevent individuals from providing services.<sup>i</sup>*

SB0054 states that a department may not deny an occupational license or certificate to an applicant solely on the basis that the applicant has previously been convicted of a crime, unless the department determines that:

- (1) there is a **direct relationship between the applicant's previous conviction and the specific occupational license or certificate sought**; or
- (2) (2) the issuance of the license or certificate would involve [an unreasonable risk to property or to the safety or welfare of specific individuals or the general public] **A DIRECT AND SUBSTANTIAL THREAT TO PUBLIC SAFETY OR SPECIFIC INDIVIDUALS OR PROPERTY.**

While we do not disagree that reform is needed- that many people are unfairly disqualified from employment for their backgrounds, when they are otherwise qualified applicants- we hope there continues to be a lens on safety of vulnerable populations who rely on certain occupationally licensed professionals for needed care. We also suggest this legislation be viewed against federal CMS requirements for backgrounds to promote quality and safety.

For more information, please contact: Ande Kolp, Executive Director, The Arc Maryland 443-851-9351 [akolp@thearcmd.org](mailto:akolp@thearcmd.org)

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<sup>i</sup> Page 244: <https://health.maryland.gov/dda/Documents/CPW%20Waiver%20Amendment%20%231%202023.pdf>