

Department of Legislative Services  
 Maryland General Assembly  
 1999 Session

FISCAL NOTE  
 Revised

House Bill 18 (Delegate Hammen)  
 Environmental Matters

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**Adult Dependent Care Programs - National Criminal History Records Checks**

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This bill requires that “adult dependent care programs” apply and pay for national and State criminal history records checks for prospective employees (currently either a State criminal history records check or private agency background check is required). In addition, an adult dependent care program is authorized to request a private agency to conduct a background check.

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**Fiscal Summary**

**State Effect:** Increase in equipment and programming expenditures of \$179,000 in FY 2000 only. Increase in criminal record check and fingerprinting expenditures, offset by cost recovery fees. Potential increase in general fund expenditures and federal fund revenues for those adult dependent care programs reimbursed by Medicaid or State community service programs.

(in dollars)	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004
GF Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditures	\$179,000	-	-	-	-
Net Effect	(\$179,000)	-	-	-	-

*Note: ( ) = decrease; GF = general funds; FF = federal funds; SF = special funds; - =indeterminate effect*

**Local Effect:** Potential indeterminate increase in revenues and expenditures. **This bill places a mandate on a unit of local government.**

**Small Business Effect:** Minimal.

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## Fiscal Analysis

**Background:** An “adult dependent care program” is defined in Health-General Article 19-901 as various facilities regulated by State law. These facilities include adult day care facilities, assisted living facilities, group homes, home health agencies, congregate housing services, residential service agencies, alternative living units, hospice facilities, and nursing homes.

The Information Technology and Communications Division (ITCD) of the Department of Public Safety and Correctional Services provides criminal history records checks. A check of national records costs \$24 and a check of State records costs \$18. Unless authorized by federal law, the Federal Bureau of Investigation (FBI) requires that application for a national criminal history records check be submitted through a centralized State entity such as the Criminal Justice Information System (CJIS) Central Repository. CJIS must collect the fee from the applicant and reimburse the FBI. Fingerprinting costs \$10 per person if done by CJIS or the Department of State Police. Local police departments charge varying fees for fingerprinting.

**State Effect:** There are approximately 26,600 employee applications for adult dependent care programs on an annual basis. This estimate reflects the number of background checks done by private firms as well as State criminal history record checks conducted by CJIS.

ITCD general fund expenditures would increase by \$179,000 in fiscal 2000 only due to the volume of record checks generated by adult dependent care employees. This estimate includes the purchase of a new fingerprint matcher workstation (\$154,000) and additional computer programming (\$25,000).

Current law requires either a State criminal history record check or a private agency background check. Adult dependent care program expenditures per applicant for a private agency background check range from \$8 to \$20. Because the bill requires adult dependent care programs to apply for both a national and State criminal history record check, program expenditures per applicant would be at least \$42 (\$24 for a national check and \$18 for a State check). However, adult dependent care programs are already paying an average of \$14 for a private background check. Therefore, the cost increase could be around \$28 (\$42 - \$14) if a program no longer uses a private background check or \$42 if a program chooses to continue to use a private agency background check in addition to the required national and State criminal history record check.

Adult dependent care programs would pay an additional \$744,800 to \$1.1 million for 26,600 criminal history record checks on an annual basis. This estimate assumes 26,600 employee applications and an increased cost of between \$28 and \$42.

Accordingly, State costs could increase, to the extent that some of the additional adult dependent care facility costs (estimated in the range of \$744,800 to \$1.1 million) are passed on to the State. The Department of Health and Mental Hygiene (DHMH) estimates that 65% of nursing home costs are paid by Medicaid. In addition, DHMH provides funding for community services programs such as adult dependent care programs. Medicaid expenditures would be partially offset by federal fund revenues, as the federal government funds 50% of Medicaid. The Department of Aging provides funds to support virtually all the costs for senior care and approximately 56% of the costs for congregate housing.

**Local Effect:** For jurisdictions that operate facilities or programs with employees that would be required to have background checks under this bill, expenditures could increase by an indeterminate amount. Any increase would depend on the number of local employees and the amount of reimbursement from State or federal programs.

**Additional Comments:** It is assumed that adult dependent care programs are not required to pay for the costs of fingerprinting applicants, because the bill specifies only that a program pay for the national and State criminal history record check. The bill does not specify that a program pay for fingerprinting of applicants.

### *Federal Developments*

The national criminal background check currently takes 6-7 weeks. However, two developments at the national level could significantly improve the response time for national criminal history record checks. The FBI's Interstate Automated Fingerprint Identification System (IAFIS) will provide for electronic submission of fingerprints and automated fingerprint matching. IAFIS is anticipated to be on-line in July 1999. The FBI advises that it will take only 24 hours to check fingerprints for non-criminal justice employment requests once fingerprints are received.

In addition, 1998 federal legislation authorized the National Crime Prevention and Privacy Compact to provide interstate record dissemination authority. States must ratify the compact to participate. Participating states would be required to make criminal history records available in response to authorized non-criminal justice employment requests from other states, based upon fingerprint identification. Under the compact system, upon request from an inquiring state, the FBI "points" to any criminal records in other states. Inquiring states would receive criminal records directly from other states, thereby eliminating the FBI as the sole disseminator of national criminal history record checks.

Federal law (P.L. 105-277) enacted in 1998 authorizes a nursing home or home health care agency to submit a request to the U.S. Attorney General to conduct a criminal background

check on applicants for employment who would have direct patient contact. The Attorney General is authorized to charge up to \$50 to search the FBI's records.

The Office of Inspector General (OIG) of the U.S. Department of Health and Human Services found in a September 1998 report that states use a patchwork of measure to identify individuals who pose a possible threat to residents of long-term care facilities. The Inspector General's report recommends that the Health Care Financing Administration (HCFA) consider establishing federal requirements and criteria for performing criminal background checks and assisting in the development of a national abuse registry. As part of the report, OIG conducted a random survey of 1,000 employees at eight Maryland nursing homes between 1996 and 1998. Approximately 5% of workers were found to have criminal records.

**Small Business Effect:** The bill could adversely affect small business adult dependent care program providers, which would be required to pay an additional \$28 to \$42 per applicant for the cost of a criminal history record check. This effect would be mitigated, however, to the extent that additional costs could be passed on to the State, which provides funding for community services programs. In addition, small business private agencies that conduct background checks for adult dependent care programs could be adversely affected to the extent that adult dependent care programs no longer use a private agency as a result of the bill's provisions.

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**Information Source(s):** Department of Public Safety and Correctional Services (Information Technology and Communications Division); Department of Health and Mental Hygiene (Medical Care Programs Administration, Community and Public Health Administration, Developmental Disabilities Administration); Department of Human Resources; Department of Aging; Maryland State Police; Department of Legislative Services; U.S. Department of Health and Human Services, *Safeguarding Long-Term Care Residents*, September 1998; Federal Bureau of Investigation (Criminal Justice Information Services Division); National Conference of State Legislatures; Mid-Atlantic Non-Profit Health and Housing Association; Health Facilities Association of Maryland

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