

Department of Legislative Services
Maryland General Assembly
2000 Session

FISCAL NOTE

Senate Bill 312 (Senator Middleton)

Finance

**Adult Dependent Care Programs - State Criminal History Records Checks and
Private Agency Background Checks**

This bill requires a “private agency,” if requested by an adult dependent care program to conduct a background check for a prospective employee, to conduct the check in each state in which there is reason to believe the prospective employee worked or resided during the past seven years. The bill also imposes certain requirements on a private agency that conducts the background checks, such as licensure and insurance coverage. In addition, the Department of Public Safety and Correctional Services must provide a statement to the prospective employee of its criminal record check findings when adverse information is obtained that precludes the hiring of the employee.

Fiscal Summary

State Effect: Potential minimal increase in general and federal fund expenditures for those adult dependent care programs that are reimbursed by State community service programs. Any increase in the number of State criminal record checks and fingerprinting requests could be handled with existing Department of Public Safety and Correctional Services (DPSCS) and State Police resources. No effect on Medicaid.

Local Effect: Potential minimal increase in revenues and expenditures.

Small Business Effect: Potential minimal.

Analysis

Current Law: An adult dependent care program must either perform a State criminal history record check or a private agency background check. A private agency background check is not required to cover other states.

Background: An adult dependent care program is defined in Health General Article 19-901 as: (1) adult day care facilities; (2) assisted living facilities; (3) group homes; (4) home health agencies; (5) congregate housing services; (6) residential service agencies; (7) alternative living units; (8) hospice facilities; and (9) nursing homes. There are approximately 6,200 adult dependent care programs in Maryland, including: 79 adult medical day care centers, 2,500 assisted living homes, 330 group homes, 71 home health agencies, 215 residential service agencies, 2,700 alternative living units, 37 hospice agencies, and 261 nursing homes.

There are approximately 26,600 employee applications to adult dependent care programs on an annual basis. This estimate reflects the number of background checks currently done by private firms as well as State criminal history record checks conducted by the Criminal Justice Information System (CJIS) Central Repository. A CJIS check performed by the State costs \$18. Fingerprinting costs \$10 if done by the DPSCS or the State Police. Local law enforcement agencies may charge a different amount for fingerprinting. A private agency background check averages \$14 per check. A background check for additional states would cost approximately \$10 - \$20 per state.

State Fiscal Effect: If adult dependent care facility costs increase as a result of this bill, facilities may pass some or all of these costs on to the State. The Department of Health and Mental Hygiene, Department of Human Resources, and the Department of Aging provide general and special funds for a variety of adult dependent care programs. Adult dependent care facilities may incur additional costs by conducting a private agency background check that requires conducting checks in other states. Many programs already conduct private agency background checks in contiguous states. If an adult dependent care facility finds this additional cost prohibitive, it may opt for a State criminal record check instead.

State expenditures would not be affected if the bill results in fewer than 10,000 additional criminal history records checks because the cost is borne by the adult dependent care programs. However, more than 10,000 additional checks would result in an increased one-time expenditure of \$154,000 for one additional fingerprint matcher workstation. Staffing increases may also be required.

Local Fiscal Effect: For jurisdictions that operate adult dependent care programs and use a private agency for background checks, or for those that opt for a State criminal record check instead, expenditures could increase. 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.

Small Business Effect: The bill's requirements could adversely affect small business adult dependent care program providers that use a private agency for background checks, or opt for a State criminal record check instead, because background checks or increased numbers of State criminal record checks may cost more. 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, the bill's licensure and insurance requirements for private agencies that conduct background checks may be expensive. Failure to obtain licensure and insurance may prevent certain private agencies from conducting background checks for adult dependent care programs.

Additional Comments: Federal law (P.L. 105-277, 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 measures 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 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.

Additional Information

Prior Introductions: SB 567 was introduced in 1999 and passed the Senate. No action was taken by the House Environmental Matters Committee.

Cross File: None.

Information Source(s): Department of Aging, Department of Human Resources (Community Services Administration), Department of Health and Mental Hygiene (Office of

Health Care Quality, Alcohol and Drug Abuse Administration, Community Public Health Administration, Developmental Disabilities Administration, Medicaid), State Police, Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - February 15, 2000

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