

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 111

(Chair, Finance Committee)(By Request - Departmental -
Health)

Finance

Health and Government Operations

Maryland Health Benefit Exchange - Criminal History Records Checks -
Contractors With Access to Federal Tax Information

This departmental bill authorizes the Maryland Health Benefit Exchange (MHBE) to perform a criminal background check, including a State and national criminal history records check (CHRC), to determine the suitability of a “contractor” to access confidential or sensitive federal tax information (FTI). **The bill takes effect June 1, 2018.**

Fiscal Summary

State Effect: MHBE can absorb the cost of CHRCs for contractors with access to FTI with existing budgeted resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: The Maryland Department of Health has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary: A “contractor” is an individual who is not a State employee with a position in the State Personnel Management System (SPMS) and who performs work functions for MHBE in accordance with the terms of a written agreement.

MHBE may require any contractor who has or may obtain access to confidential or sensitive FTI to provide specified information necessary to perform a criminal background

check and request a State and national CHRC on the contractor from the Criminal Justice Information System (CJIS) Central Repository. As part of the application for a CHRC, MHBE may collect from the contractor and submit to CJIS (1) two sets of fingerprints; (2) the authorized State and national fees for CHRCs; and (3) any other required documents or fees for the completion of a CHRC. MHBE may conduct a reinvestigation within 10 years after the date of the previous background investigation for each contractor with access to FTI.

CJIS must forward to the contractor and MHBE the contractor's criminal history record information. Information obtained from CJIS is confidential, may not be disseminated, and may be used only for purposes authorized under the bill. A contractor who is the subject of a CHRC may contest the criminal history record information issued by CJIS. If criminal history record information is reported to CJIS after the date of the initial CHRC, CJIS must provide MHBE and the contractor with revised criminal history record information on the contractor.

A contractor who refuses to comply with or fails the CHRC may not perform work functions that require access to FTI.

The bill does not limit the authority of MHBE to perform a background investigation or request a CHRC for personnel in accordance with State personnel and pensions law.

Current Law: Chapter 98 of 2016 authorizes an appointing authority to require a prospective or current employee in a position in SPMS involving access to confidential or sensitive FTI to provide information for a background investigation, including the prospective or current employee's address, employment, and education history spanning back at least five years. An appointing authority may also request a State and national CHRC from CJIS.

When applying for a CHRC, the appointing authority must submit specified fees and two complete sets of fingerprints to CJIS. CJIS must forward the results to the appointing authority and the prospective or current employee. A CHRC is confidential, may not be disseminated, and may be used only for specified employment purposes. If criminal history record information is reported to CJIS after the initial CHRC, CJIS must provide a revised printed statement of the prospective or current employee's criminal history record to the appointing authority. A prospective or current employee may contest the results of the CHRC. A prospective or current employee who refuses to comply with or fails the background investigation or CHRC is deemed unqualified for employment and, if a current employee, subject to disciplinary action.

Background: Internal Revenue Service Publication 1075 requires agencies to develop a written policy requiring employees, contractors, and subcontractors to complete a

background investigation prior to accessing FTI. Agencies must ensure that a reinvestigation is conducted within 10 years. Failure to comply with Publication 1075 could jeopardize the State's access to FTI.

State Expenditures: The current cost of a full State and national CHRC is \$50 (including a \$12 Federal Bureau of Investigation fee, an \$18 CJIS fee, and a \$20 fingerprinting fee). The cost of the State "rap back" program is included in the cost of the initial CJIS fee; however, there is an additional \$15 fee per applicant for the federal "rap back" program. MHBE has identified 10 contractors with access to FTI for which it must perform criminal background checks. The total cost to the agency in fiscal 2018 is, therefore, estimated at approximately \$650.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Health; Department of Public Safety and Correctional Services; Maryland Health Benefit Exchange; Department of Legislative Services

Fiscal Note History: First Reader - January 15, 2018
nb/ljm Third Reader - January 26, 2018

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

**Department of Health
Session 2018**

TITLE: Maryland Health Benefit Exchange – Criminal
History Records Checks – Contractors with Access to
Federal Tax Information

PREPARED BY: Michele Eberle

(Program\Unit): Maryland Health Benefit Exchange

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

 X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

 WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation is narrow in scope and affects only independent contractors of MHBE. It will only impose new requirements on approximately 10 current contractors. MHBE reserves the authority to require vendors to perform background investigations on employees who perform services for MHBE and who may have access to FTL.

