



# House of Representatives

General Assembly

**File No. 328**

February Session, 2000

Substitute House Bill No. 5788

*House of Representatives, March 30, 2000*

The Committee on Public Health reported through REP. EBERLE of the 15<sup>th</sup> Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***An Act Concerning Certification And Background Checks For Home Health Aides And Background Checks For Emergency Medical Technicians, For Certain Caregivers And For Nursing Home Employment.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) As used in sections 1 to 3, inclusive, of this act:
- 2 (1) "Commissioner" means the Commissioner of Public Health;
- 3 (2) "Department" means the Department of Public Health;
- 4 (3) "Home health aide" means a person employed by a home health
- 5 care agency or a homemaker-home health aide agency, as defined
- 6 respectively in section 19a-490 of the general statutes, as amended by
- 7 this act, who has direct contact with the patients to whom such
- 8 agencies provide service, but does not include (A) health care
- 9 providers licensed, certified or registered by the state, or (B) persons,
- 10 hired directly by the patient, including, but not limited to, personal

11 care assistants; and

12 (4) "Certified home health aide" means a home health aide who has  
13 been issued a certification pursuant to section 3 of this act.

14 Sec. 2. (NEW) (a) Except as provided in subsection (b) of this  
15 section, no home health care agency or homemaker-home health aide  
16 agency, as defined respectively in section 19a-490 of the general  
17 statutes, as amended by this act, may employ a person as a home  
18 health aide, unless: (1) The aide is a certified home health aide; and (2)  
19 the agency obtains a state criminal history records check on the home  
20 health aide that has been conducted within six months of the date of  
21 hire. If the department does not have available a state criminal history  
22 records check that has been conducted within such time period, the  
23 agency may conduct its own state criminal history records check and  
24 may charge the cost of doing so to the home health aide. If the agency  
25 conducts such check, it shall file a copy of the results of such check  
26 with the department.

27 (b) Notwithstanding the requirements of subsection (a) of this  
28 section, a home health care agency or homemaker-home health aide  
29 agency may employ a person to perform the duties of a home health  
30 aide provided: (1) The agency has requested a state criminal history  
31 records check from the department or has commenced its own state  
32 criminal history records check on the person; (2) the person is applying  
33 or has applied to become a certified home health aide; and (3) the  
34 person performs home health aide duties only under the direct  
35 supervision of a nurse licensed under chapter 378 of the general  
36 statutes pending certification and the results of the criminal history  
37 records check.

38 (c) Each home health care agency or homemaker-home health aide  
39 agency shall report in writing to the department and to local law  
40 enforcement officials any allegation or evidence of abuse, neglect or  
41 misappropriation of a patient's funds or property by any employee of

42 the agency. The agency shall make such report not later than seventy-  
43 two hours after obtaining knowledge of the incident. The report shall  
44 not be subject to disclosure under the Freedom of Information Act, as  
45 defined in section 1-200 of the general statutes, and the report shall not  
46 contain the name of the patient unless the patient requests such  
47 disclosure. No person making a report in good faith under this  
48 subsection shall be liable in any civil action for damages brought by  
49 the employee. Compliance with this subsection shall not relieve any  
50 person from the duty to comply with the reporting requirements of  
51 chapter 319dd of the general statutes concerning protection of the  
52 elderly, chapter 319a of the general statutes concerning child welfare,  
53 chapter 813 of the general statutes concerning protection and advocacy  
54 of persons with disabilities, or any other reporting requirements of the  
55 general statutes.

56 Sec. 3. (NEW) (a) No person may use the title "certified home health  
57 aide" or make use of any title, words, letters or abbreviations that may  
58 reasonably be confused with certification as a home health aide unless  
59 certified under this section.

60 (b) The department shall establish and maintain a procedure for the  
61 certification of home health aides. If an applicant for certification as a  
62 home health aide has provided or submitted to a criminal history  
63 records check, the results shall not be subject to disclosure under the  
64 Freedom of Information Act, as defined in section 1-200 of the general  
65 statutes, provided the applicant may authorize release of the criminal  
66 history records check.

67 (c) The department shall issue a certification as a home health aide  
68 to any person who successfully completes home health aide training, a  
69 competency test and an evaluation program approved by the  
70 department. The training, competency testing and evaluation may be  
71 conducted by a home health care agency, a homemaker-home health  
72 aide agency or other entity that the department approves for such

73 training, competency testing and evaluation. An applicant for  
74 certification as a home health aide need not be employed by a home  
75 health care agency, a homemaker-home health aide agency or other  
76 such entity in order to qualify for such certification.

77 (d) Application for certification as a home health aide shall be on  
78 forms prescribed by the department. The form shall require the  
79 applicant's Social Security number.

80 (e) The application fee for initial certification under this section shall  
81 be twenty-five dollars. A certification may be renewed pursuant to  
82 section 19a-88 of the general statutes, as amended by this act, for a fee  
83 of twenty-five dollars.

84 (f) The department may adopt regulations, in accordance with  
85 chapter 54 of the general statutes, to implement the provisions of  
86 sections 1 to 3, inclusive, of this act.

87 (g) The department may take any action set forth in section 19a-17 of  
88 the general statutes if a certified home health aide fails to conform to  
89 the accepted standards of the home health aide profession, including,  
90 but not limited to, the following: (1) Conviction of a felony; (2) fraud or  
91 deceit in professional practice; (3) illegal conduct; (4) negligent,  
92 incompetent or wrongful conduct in professional activities; (5)  
93 emotional disorder or mental illness; (6) physical illness including, but  
94 not limited to, deterioration through the aging process; (7) abuse or  
95 excessive use of drugs, including alcohol, narcotics or chemicals; (8)  
96 wilful falsification of entries in any client or patient record; (9)  
97 misrepresentation or concealment of a material fact in the obtaining or  
98 reinstatement of a home health aide certificate; or (10) violation of any  
99 provision of this section or section 2 of this act. The commissioner may  
100 order a certified home health aide to submit to a reasonable physical or  
101 mental examination if such home health aide's physical or mental  
102 capacity to practice safely is the subject of an investigation. The  
103 commissioner may petition the superior court for the judicial district of

104 Hartford to enforce such order or any action taken pursuant to section  
105 19a-17 of the general statutes. Notice of any contemplated action under  
106 section 19a-17 of the general statutes, the cause of the action and the  
107 date of a hearing on the action shall be given and an opportunity for  
108 hearing afforded in accordance with the provisions of chapter 54 of the  
109 general statutes.

110 Sec. 4. (NEW) (a) As used in this section, "caregiver" means any  
111 individual whose employment or contractual service with any agency  
112 includes providing direct care services or having routine physical  
113 access to clients of the agency or having routine access to the financial  
114 records or assets of such clients, but does not include a home health  
115 aide, as defined in section 1 of this act.

116 (b) The Commissioner of Public Health shall conduct a state  
117 criminal history records check of any caregiver who may be employed  
118 or otherwise engaged by any agency to provide direct care services,  
119 including, but not limited to, respite care, to clients of such agency  
120 having physical or mental disabilities. The commissioner shall conduct  
121 such criminal history records check, prior to or within six months of  
122 such caregiver being so employed or engaged, upon the written  
123 request of any agency that intends to employ or otherwise engage such  
124 caregiver. The commissioner may charge a fee for requests made  
125 under this section that shall not exceed the actual cost of such criminal  
126 history records check. The provisions of this subsection shall not apply  
127 to (1) any caregiver who is licensed, certified or registered by the state  
128 and is acting within the scope of the caregiver's license, certificate or  
129 registration in providing such direct care services, or (2) any caregiver  
130 who is required to submit to a state or federal criminal history records  
131 check under any other provision of the general statutes in order to  
132 provide such direct care services.

133 (c) If the caregiver has provided or submitted to a criminal history  
134 records check, the results shall not be subject to disclosure under the

135 Freedom of Information Act, as defined in section 1-200 of the general  
136 statutes, provided the caregiver may authorize release of the criminal  
137 history records check.

138 (d) The commissioner may adopt regulations, in accordance with  
139 chapter 54 of the general statutes, to carry out the provisions of this  
140 section.

141 (e) The Division of State Police, within the Department of Public  
142 Safety, shall assist the commissioner in conducting a state criminal  
143 history records check of any caregiver under subsection (b) of this  
144 section, shall arrange for the fingerprinting of such caregiver and shall  
145 forward such fingerprints to the State Police Bureau of Identification  
146 for completion of such state criminal history records check.

147 Sec. 5. Subsection (c) of section 19a-14 of the general statutes, as  
148 amended by section 2 of public act 99-249 and section 60 of public act  
149 99-2 of the June special session, is repealed and the following is  
150 substituted in lieu thereof:

151 (c) No board shall exist for the following professions that are  
152 licensed or otherwise regulated by the Department of Public Health:

153 (1) Speech pathologist and audiologist;

154 (2) Hearing aid dealer;

155 (3) Nursing home administrator;

156 (4) Sanitarian;

157 (5) Subsurface sewage system installer or cleaner;

158 (6) Marital and family therapist;

159 (7) Nurse-midwife;

- 160 (8) Licensed clinical social worker;
- 161 (9) Respiratory care practitioner;
- 162 (10) Asbestos contractor and asbestos consultant;
- 163 (11) Massage therapist;
- 164 (12) Registered nurse's aide;
- 165 (13) Radiographer;
- 166 (14) Dental hygienist;
- 167 (15) Dietitian-Nutritionist;
- 168 (16) Asbestos abatement worker;
- 169 (17) Asbestos abatement site supervisor;
- 170 (18) Licensed or certified alcohol and drug counselor;
- 171 (19) Professional counselor;
- 172 (20) Acupuncturist;
- 173 (21) Occupational therapist;
- 174 (22) Lead abatement contractor; [and]
- 175 (23) Nail technician; and
- 176 (24) Certified home health aide.

177 The department shall assume all powers and duties normally vested  
178 with a board in administering regulatory jurisdiction over said  
179 professions. The uniform provisions of this chapter and chapters 368v,  
180 369 to 381a, inclusive, 383 to 388, inclusive, 393a, 395, 398, 399, 400a  
181 and 400c, including, but not limited to, standards for entry and

182 renewal; grounds for professional discipline; receiving and processing  
183 complaints; and disciplinary sanctions, shall apply, except as otherwise  
184 provided by law, to the professions listed in this subsection.

185 Sec. 6. Subsection (e) of section 19a-88 of the general statutes, as  
186 amended by section 61 of public act 99-2 of the June special session, is  
187 repealed and the following is substituted in lieu thereof:

188 (e) Each person holding a license or certificate issued under section  
189 3 of this act, section 19a-514, 20-74s, as amended, 20-195cc or 20-206ll  
190 and chapters 370 to 373, inclusive, 375, 378 to 381a, inclusive, 383 to  
191 388, inclusive, 393a, 395, 398, 399 or 400a and section 20-206n, 20-206o  
192 or section 56 of [this act] public act 99-2 of the June special session  
193 shall, annually, during the month of [the applicant's] such person's  
194 birth, apply for renewal of such license or certificate to the Department  
195 of Public Health, giving [the applicant's] such person's name in full,  
196 [the applicant's] such person's residence and business address and  
197 such other information as the department requests. Each person  
198 holding a license or certificate issued pursuant to section 20-475 or 20-  
199 476 shall, annually, during the month of [the applicant's] such person's  
200 birth, apply for renewal of such license or certificate to the department.  
201 Each entity holding a license issued pursuant to section 20-475 shall,  
202 annually, during the anniversary month of initial licensure, apply for  
203 renewal of such license or certificate to the department.

204 Sec. 7. Section 19a-179 of the general statutes is repealed and the  
205 following is substituted in lieu thereof:

206 The Commissioner of Public Health shall adopt regulations  
207 concerning the methods and conditions for licensure and certification  
208 of the operations, facilities and equipment enumerated in section 19a-  
209 177 and regulations regarding complaint procedures for the public and  
210 any emergency medical service organization. Such regulations shall be  
211 adopted in accordance with the provisions of chapter 54 and shall be in  
212 conformity with the policies and standards established by the

213 commissioner. Such regulations shall (1) establish qualifications for  
214 persons to obtain and maintain certification as emergency medical  
215 technicians, and (2) require that any person submitting an application  
216 for such certification on or after October 1, 2000, shall submit to state  
217 and national criminal history records checks.

218 Sec. 8. Subdivision (d) of section 19a-490 of the general statutes is  
219 repealed and the following is substituted in lieu thereof:

220 (d) "Home health care agency" means a public or private  
221 organization, or a subdivision thereof, engaged in providing  
222 professional nursing services and the following services, available  
223 twenty-four hours per day, in the patient's home or a substantially  
224 equivalent environment: [Homemaker-home] Home health aide  
225 services, [as defined in this section,] physical therapy, speech therapy,  
226 occupational therapy or medical social services. The agency shall  
227 provide professional nursing services and at least one additional  
228 service directly and all others directly or through contract. An agency  
229 shall be available to enroll new patients seven days a week, twenty-  
230 four hours per day.

231 Sec. 9. Subdivision (f) of section 19a-490 of the general statutes is  
232 repealed and the following is substituted in lieu thereof:

233 [(f) "Homemaker-home health aide services" as defined in this  
234 section] (f) "Home health aide services" shall not include services  
235 provided to assist individuals with activities of daily living when such  
236 individuals have a disease or condition that is chronic and stable as  
237 determined by a physician licensed in the state of Connecticut.

238 Sec. 10. Subsection (c) of section 19a-491 of the general statutes is  
239 repealed and the following is substituted in lieu thereof:

240 (c) For purposes of this chapter, an institution shall include any  
241 person or public or private agency which either advertises, arranges

242 for or provides [a homemaker health aide or homemaker-home] home  
243 health aide services in a patient's home or a substantially equivalent  
244 environment.

245 Sec. 11. Subsection (e) of section 19a-491 of the general statutes is  
246 repealed and the following is substituted in lieu thereof:

247 (e) The commissioner may require as a condition of the licensure of  
248 home health care agencies and homemaker-home health aide agencies  
249 that each agency meet minimum service quality standards. In the  
250 event the commissioner requires such agencies to meet minimum  
251 service quality standards as a condition of their licensure, [he] the  
252 commissioner shall adopt regulations, in accordance with the  
253 provisions of chapter 54, to define such minimum service quality  
254 standards, which shall allow for training of [homemaker-home health  
255 care] home health aides by adult continuing education.

256 Sec. 12. Section 19a-491b of the general statutes is repealed and the  
257 following is substituted in lieu thereof:

258 (a) Any person who is licensed to establish, conduct, operate or  
259 maintain a nursing home shall notify the Commissioner of Public  
260 Health immediately if the owner, conductor, operator or maintainer of  
261 the home, any person described in subdivision (3) of subsection (a) of  
262 section 19a-491a, or any nurse or nurse's aide has been convicted of (1)  
263 a felony, as defined in section 53a-25, (2) cruelty to persons under  
264 section 53-20, or (3) assault of a victim sixty or older under section 53a-  
265 61a, as amended; or has been subject to any decision imposing  
266 disciplinary action by the licensing agency in this or any other state [,  
267 the District of Columbia, a United States possession or territory or a  
268 foreign] or any other jurisdiction. Failure to comply with the  
269 notification requirement of this subsection shall subject the licensed  
270 person to a civil penalty of not more than one hundred dollars.

271 (b) Each nursing home shall require a person described in

272 subdivision (3) of subsection (a) of section 19a-491a or a nurse or  
273 nurse's aide to complete and sign an application form which contains  
274 questions as to whether the person has been convicted of any crime  
275 specified in subsection (a) of this section or has been subject to any  
276 decision imposing disciplinary action as described in said subsection.  
277 Any person seeking employment in a position connected with the  
278 provision of care in a nursing home who makes a false written  
279 statement regarding such prior criminal convictions or disciplinary  
280 action shall be guilty of a Class A misdemeanor.

281 (c) On and after October 1, 2000, no nursing home may hire any  
282 person for a position as a nurse's aide unless the nursing home obtains  
283 a state criminal history records check on such person that has been  
284 conducted within twenty-four months of the date of hire. The  
285 Department of Public Health shall supply the nursing home with such  
286 state criminal history records check. If the department does not have  
287 available, in the registry of nurse's aides established under section 20-  
288 102bb, a state criminal history records check that has been conducted  
289 within such time period, the department shall conduct a state criminal  
290 history records check on such person.

291 (d) Notwithstanding the requirements of subsection (c) of this  
292 section, a nursing home may employ a person to perform the duties of  
293 a nurse's aide subject to the condition of obtaining a state criminal  
294 history records check on such person, provided the nursing home has  
295 requested a state criminal history records check on such person from  
296 the department or has commenced its own state criminal history  
297 records check on such person.

298 (e) No nursing home may disclose or use any criminal history  
299 background information acquired under this section for any purpose  
300 except a determination of employment. A violation of this subsection  
301 shall be deemed an unfair or deceptive trade practice under subsection  
302 (a) of section 42-110b. Any nursing home that, in good faith, fails to

303 employ or discharges any conditionally employed person based upon  
304 information contained in a state criminal history records check  
305 obtained pursuant to this section shall be immune from civil and  
306 criminal liability that might otherwise be incurred or imposed based  
307 on the refusal to hire or discharge.

308 [(c)] (f) (1) The Division of State Police, within the Department of  
309 Public Safety, shall assist the Department of Public Health in  
310 conducting criminal background investigations of persons described in  
311 subdivision (1) of subsection (a) of section 19a-491a.

312 (2) The Division of State Police, within the Department of Public  
313 Safety, shall assist any nursing home in conducting a state criminal  
314 history records check of any person under final consideration for  
315 employment by such nursing home as a nurse's aide, shall arrange for  
316 the fingerprinting of such person and shall forward such fingerprints  
317 to the State Police Bureau of Identification for completion of such state  
318 criminal history records check.

**PH Committee Vote: Yea 25 Nay 0 JFS**

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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**OFA Fiscal Note**

**State Impact:** Significant Cost, Potential Indeterminate Cost, Revenue Gain

**Affected Agencies:** Departments of Public Health, Public Safety, Social Services; Judicial Department

**Municipal Impact:** None

**Explanation**

**State Impact:**

**Introduction**

This bill establishes a home health aide certification program, and also sets forth requirements for criminal history record checks of caregivers of the disabled, nurse’s aides, and emergency medical technicians.

**Home Health Aide Certification**

Establishment of a certification program for home health aides will result in a cost to the Department of Public Health (DPH), a cost to the Department of Public Safety (DPS) and a revenue gain to the State. The bill establishes the certification program under the DPH and prohibits a home health aide agency or a homemaker-home health aide agency from hiring a home health aide without a state criminal history

records check after October 1, 2000.

The Department of Public Health will incur an FY 01 cost of approximately \$408,000 to institute certification of an estimated 15,000 home health aides and develop a database of criminal history checks on these same individuals. Included in this sum is \$360,000 to support the salaries of eight positions, as follows: 3 Office Assistants, 1 Nurse Consultant, 1 Special Investigator, 2 Administrative Hearings Attorneys, and 1 Licensing Examination Assistant. Also included is \$48,000 for other expenses and equipment costs. In FY 02 and subsequent years a cost of \$384,200 will be incurred as one-time equipment costs will not recur.

A projected FY 01 revenue gain of \$468,750 will result from collection of a \$25 application fee and a \$25 renewal fee. Since applicants for certificate renewal must submit their applications during the month of their birthday, a portion of those seeking certification will pay both an initial and renewal fee in the first year of the program. In subsequent fiscal years, an estimated \$375,000 would be collected from individuals renewing their certificates.

It is anticipated that should the Department of Public Health adopt regulations to implement the home health aide certification program it will do so within its anticipated budgetary resources.

The State Police would conduct a state criminal history records check on each of the 15,000 home health aides. Costs to the Department of Public Safety (DPS) would depend on whether the records check would be done as a "quick check" or as a more extensive records check using fingerprints. The quick check would only require the submittal of the applicant's name and date of birth. While there would be a backlog of these checks at first, they could be conducted by DPS utilizing existing staff and within existing resources. If fingerprints are used it is estimated that annual costs would be about \$200,000. Fingerprints are necessary to absolutely determine the

identity of the applicant. DPS would conduct a basic background check on each of the 15,000 aides. This includes not only the state criminal history records check, but searches through motor vehicles, corrections, and the sex crimes databases. DPS estimates that each background check would take about 45 minutes and five additional positions would be required to handle the additional workload. This includes one Supervisor, two Clerk Typists and two Office Assistants. First year costs would be about \$200,000. Costs in subsequent years would depend on the number of applicants for the home health aide positions, and cannot be determined at this time. Law prohibits DPS from charging other state or public agencies for criminal history background checks. It may charge a fee of \$25 from all other parties. A FY 01 revenue gain of \$375,000 would result if the background checks were requested by private agencies. Future year revenues would vary according to the number of new hires.

No funding has been included under either the DPH's or the DPS's budgets within the House or Senate versions of the Revised FY 01 Appropriations Act to implement the home health certification program.

Any resulting increase in caseload for the criminal justice system resulting from disciplinary actions taken against home health aides will be able to be accommodated within available resources.

#### **Criminal History Records Checks of Caregivers, Emergency Medical Technicians and Nurse's Aides**

Section 4 of the bill requires the Department of Public Health to conduct a state criminal history records check of any person working as a caregiver of a disabled client.

Section 7 of the bill requires persons applying for certification as an emergency medical technician (EMT) on or after October 1, 2000, to submit to a state and national criminal history records check. It is

unclear whether this requirement would be interpreted to apply to only new applications for certification, or whether persons renewing their EMT certifications would also have to obtain a criminal records check. It is also unclear whether the Department of Public Health would be required to assist EMTs with obtaining criminal records checks, or whether this responsibility would lie solely with the State Police.

Section 12 prohibits employment of a nurse's aide by a nursing home after September 30, 2000, unless a state criminal history records check has been done within 24 months of the date of hire. The DPH will be required to conduct the check if one is not available in the nurse's aide registry.

The Department of Public Health will incur an FY 01 cost of approximately \$601,500 to implement the criminal history record check program for an estimated 17,500 caregivers, 2,000 EMTs and 10,000 nurse's aides. Included in this sum is \$519,700 to reflect salaries of thirteen positions, as follows: 6 Clerk Typists, 2 Office Assistants, 1 Licensing Examination Assistant, 2 Nurse Consultants, and 2 Administrative Hearings Attorneys II. Also included in equipment and other expenses funding of approximately \$81,800. In subsequent years this cost would fall to \$564,700 as one-time equipment expenses would not recur.

The State Police are charged under the bill with assisting the DPH in conducting these records checks, to include arranging for the taking of fingerprints. The FBI national check costs \$24 for each search (\$18 for a volunteer), and DPS could charge \$25 for the state search (\$18 for a volunteer). DPS estimates that each background check would take about 45 minutes. The number of background checks cannot be determined at this time, but if they exceed 2,000 per year, DPS would require additional staff and resources. Failure to provide additional resources would result in increasing a backlog of such checks,

currently at two months. Law prohibits DPS from charging other state or public agencies for criminal history background checks.

No funding has been included under either the DPH's or the DPS's budgets within the House or Senate versions of the Revised FY 01 Appropriations Act to institute criminal records checks of caregivers, EMTs or nurse's aides.

The Department of Social Services (DSS) currently spends approximately \$1 billion annually on long-term care through Medicaid reimbursement of private nursing facilities. To the extent that the requirement for background checks for nurse's aides increases the operational cost of private nursing homes, these costs could be passed on in future rates set for Medicaid reimbursement. The resulting increase in state costs cannot be determined.

The agency budgets do not include fringe benefit costs as they are provided in separate agency accounts administered by the Comptroller. As the fringe benefit costs associated with this bill represent a relatively small amount compared to the total appropriated to the Comptroller for fringe benefits for all state employees, they have not been reflected in this estimate.

**OLR Bill Analysis**

sHB 5788

**AN ACT CONCERNING CERTIFICATION AND BACKGROUND CHECKS FOR HOME HEALTH AIDES AND BACKGROUND CHECKS FOR EMERGENCY MEDICAL TECHNICIANS, FOR CERTAIN CAREGIVERS AND FOR NURSING HOME EMPLOYMENT.****SUMMARY:**

This bill establishes a certification program for home health aides that the Department of Public Health (DPH) administers. It sets certification requirements and fees, and gives DPH the authority to take disciplinary action against certified aides for failing to conform to accepted professional standards. Under the bill, home health care agencies or homemaker-home health aide agencies may only employ certified aides or those seeking certification.

The bill requires home health aides, emergency medical technicians, and caregivers to submit to criminal history records checks to work in the state. The bill also makes technical changes.

EFFECTIVE DATE: October 1, 2000

**HOME HEALTH AIDES*****Certification***

The bill requires DPH to establish a procedure to certify home health aides. The aide must successfully complete home health aide training, a competency test, and a DPH-approved evaluation program. The training, testing and evaluation can be done by a home health care agency, homemaker-home health aide agency or other DPH-approved entity. The applicant does not have to be employed by a home health care agency, homemaker-home health aide agency, or other entity to qualify for certification.

An application for certification must be on a DPH-prescribed form which requires the person's social security number. The initial application fee, and the subsequent, annual renewal fee is \$25.

No one may use the title "certified home health aide" or use any title, words, letters, or abbreviations that may reasonably be confused with certification unless that person is certified.

The bill provides that if the applicant has provided or submitted to a criminal records check, the results are not subject to disclosure under the Freedom of Information (FOI) Act. The aide can authorize release of such a check.

The bill authorizes the DPH commissioner to take a variety of disciplinary actions against certified aides for failing to meet accepted professional standards due to (1) felony conviction; (2) fraud or deceit in practice; (3) illegal conduct; (4) negligence, incompetence, or wrongful conduct in professional activities; (5) emotional disorder or mental illness; (6) physical illness, including deterioration through aging; (7) alcohol or substance abuse; (8) willful records falsification; (9) misrepresentation or concealment of a material fact in getting or reinstating a certificate; or (10) violation of any provisions of the bill.

By law, the DPH commissioner can revoke or suspend the certificate, censure the person, issue a letter of reprimand, place him on probation, or impose a civil penalty of up to \$10,000.

DPH may adopt regulations to implement the certification program.

### ***Criminal History Records Check***

The bill prohibits a home health care agency or homemaker-home health aide agency from employing a person as a home health aide unless (1) he is a certified home health aide and (2) the agency obtains a state criminal history records check on him, done within six months of the hiring date. (It is unclear if this includes after hiring, as well as before hiring.) If DPH does not have a recent check available, the bill allows the agency to conduct the check and charge the aide for the cost. In such cases, the agency must file a copy of the results with DPH.

As an alternative, the bill allows an agency to hire a person to perform the duties of a home health aide if (1) the agency has requested a criminal records check from DPH or begun its own check, (2) the person has or is applying for certification, and (3) the person performs home health aide duties only under the direct supervision of a licensed nurse pending certification and the background check results.

### *Reporting of Abuse*

The bill requires each agency to report in writing to DPH and local law enforcement any allegation or evidence of patient abuse, neglect, or misappropriation of funds or property by an agency employee. The report must be made within 72 hours of knowing of the incident. The report is not subject to disclosure under FOI and must not include the patient's name unless he requests it.

A person making a report in good faith is not liable for damages in any civil action brought by the employee. Under the bill, compliance with this reporting requirement does not relieve a person from complying with other statutory reporting requirements concerning the elderly, child welfare, protection and advocacy of those with disabilities, and any others required by law.

### **CAREGIVERS**

The bill requires DPH to conduct a state criminal history records check of any caregiver employed or otherwise engaged by any agency to provide direct care services. This includes respite care to agency clients having physical or mental disabilities. The bill defines "caregiver" as an individual whose employment or contractual service with an agency includes providing direct care services or having routine physical access to agency clients or routine access to a client's financial records or assets. But it does not include a home health aide.

DPH must do the check, prior to or within six months of the caregiver's employment, if requested in writing by any agency intending to employ or otherwise engage the caregiver. The bill allows DPH to charge a fee for the background check that cannot exceed the actual cost of the records check. The check does not apply to (1) any

state licensed, certified, or registered caregiver acting within their scope of practice in providing direct care services or (2) a caregiver required to submit to a state or federal criminal records check under any other provision of state law in order to provide direct care.

Results of the check are not subject to disclosure under FOI, but the person can authorize their release.

The bill directs the Division of State Police to assist DPH in conducting the records check, arrange for caregivers fingerprinting, and forward them to the State Police Bureau of Identification. DPH can adopt regulations on caregiver background checks.

### **EMERGENCY MEDICAL TECHNICIANS (EMTs)**

By law, DPH must adopt regulations on (1) licensure and certification of the operations, equipment, and facilities involved in emergency medical services (EMS) and (2) complaint procedures for the public and any EMS organization. This bill requires the regulations to include qualifications for persons to receive and maintain certification as EMTs and also requires anyone applying for certification beginning October 1, 2000 to submit to a state and national criminal history records check.

### **NURSE'S AIDES**

Under the bill and beginning October 1, 2000, nursing homes can only hire nurse's aides who have undergone a state criminal history records check within 24 months of hire. DPH must supply the nursing home with the background check. If DPH does not have a recent check on file in its existing nurse's aides registry, it must conduct its own check on the aide.

As an alternative, the bill allows a nursing home to employ a person to do nurse's aide work conditioned on getting a records check, if the home has requested a state check from DPH or has begun its own check.

The bill prohibits the nursing home from disclosing or using any criminal history background information for any purpose except

determining employment. A violation of this is an unfair or deceptive trade practice under the bill. A nursing home that, in good faith, fails to employ or discharges any conditionally employed person based on records check information is immune from civil and criminal liability that might otherwise result from discharging or not hiring the person.

The Division of State Police must assist a nursing home with the background check of any nurse's aide under final employment consideration. It must also arrange for fingerprinting and forward them to the State Police Bureau of Identification.

**COMMITTEE ACTION**

Public Health Committee

Joint Favorable Substitute

Yea 25    Nay 0