



House of Representatives

General Assembly

File No. 107

January Session, 2001

Substitute House Bill No. 6725

House of Representatives, April 2, 2001

The Committee on Public Health reported through REP. EBERLE of the 15th 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 protective services for
52 the elderly, chapter 319a of the general statutes concerning child
53 welfare, chapter 813 of the general statutes concerning protection and
54 advocacy for persons with disabilities, or any other reporting
55 requirements of the 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 is
148 repealed and the following is substituted in lieu thereof:

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

- 151 (1) Speech pathologist and audiologist;
- 152 (2) Hearing aid dealer;
- 153 (3) Nursing home administrator;
- 154 (4) Sanitarian;
- 155 (5) Subsurface sewage system installer or cleaner;
- 156 (6) Marital and family therapist;
- 157 (7) Nurse-midwife;
- 158 (8) Licensed clinical social worker;
- 159 (9) Respiratory care practitioner;

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

175 The department shall assume all powers and duties normally vested
176 with a board in administering regulatory jurisdiction over said
177 professions. The uniform provisions of this chapter and chapters 368v,
178 369 to 381a, inclusive, 383 to 388, inclusive, 393a, 395, 398, 399, 400a
179 and 400c, including, but not limited to, standards for entry and
180 renewal; grounds for professional discipline; receiving and processing
181 complaints; and disciplinary sanctions, shall apply, except as otherwise
182 provided by law, to the professions listed in this subsection.

183 Sec. 6. Subsection (c) of section 19a-14 of the general statutes, as
184 amended by section 8 of public act 00-226, is repealed and the
185 following is substituted in lieu thereof:

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

- 188 (1) Speech pathologist and audiologist;
- 189 (2) Hearing aid dealer;
- 190 (3) Nursing home administrator;
- 191 (4) Sanitarian;
- 192 (5) Subsurface sewage system installer or cleaner;
- 193 (6) Marital and family therapist;
- 194 (7) Nurse-midwife;
- 195 (8) Licensed clinical social worker;
- 196 (9) Respiratory care practitioner;
- 197 (10) Asbestos contractor and asbestos consultant;
- 198 (11) Massage therapist;
- 199 (12) Registered nurse's aide;
- 200 (13) Radiographer;
- 201 (14) Dental hygienist;
- 202 (15) Dietitian-Nutritionist;
- 203 (16) Asbestos abatement worker;

- 204 (17) Asbestos abatement site supervisor;
- 205 (18) Licensed or certified alcohol and drug counselor;
- 206 (19) Professional counselor;
- 207 (20) Acupuncturist;
- 208 (21) Occupational therapist;
- 209 (22) Lead abatement contractor;
- 210 (23) Nail technician; [and]
- 211 (24) Certified home health aide; and
- 212 ~~[(24)]~~ (25) Athletic trainer.

213 The department shall assume all powers and duties normally vested
214 with a board in administering regulatory jurisdiction over said
215 professions. The uniform provisions of this chapter and chapters 368v,
216 369 to 381a, inclusive, 383 to 388, inclusive, 393a, 395, 398, 399, 400a
217 and 400c, including, but not limited to, standards for entry and
218 renewal; grounds for professional discipline; receiving and processing
219 complaints; and disciplinary sanctions, shall apply, except as otherwise
220 provided by law, to the professions listed in this subsection.

221 Sec. 7. Subsection (e) of section 19a-88 of the general statutes is
222 repealed and the following is substituted in lieu thereof:

223 (e) Each person holding a license or certificate issued under section
224 3 of this act, section 19a-514, 20-74s, 20-195cc or 20-206ll and chapters
225 370 to 373, inclusive, 375, 378 to 381a, inclusive, 383 to 388, inclusive,
226 393a, 395, 398, 399 or 400a and section 20-206n, 20-206o or 20-266c
227 shall, annually, during the month of such person's birth, apply for
228 renewal of such license or certificate to the Department of Public
229 Health, giving such person's name in full, such person's residence and

230 business address and such other information as the department
231 requests. Each person holding a license or certificate issued pursuant
232 to section 20-475 or 20-476 shall, annually, during the month of such
233 person's birth, apply for renewal of such license or certificate to the
234 department. Each entity holding a license issued pursuant to section
235 20-475 shall, annually, during the anniversary month of initial
236 licensure, apply for renewal of such license or certificate to the
237 department.

238 Sec. 8. Subsection (e) of section 19a-88 of the general statutes, as
239 amended by section 9 of public act 00-226, is repealed and the
240 following is substituted in lieu thereof:

241 (e) Each person holding a license or certificate issued under section
242 3 of this act, section 19a-514, 20-65k, 20-74s, 20-195cc or 20-206ll and
243 chapters 370 to 373, inclusive, 375, 378 to 381a, inclusive, 383 to 388,
244 inclusive, 393a, 395, 398, 399 or 400a and section 20-206n, 20-206o or
245 20-266c shall, annually, during the month of such person's birth, apply
246 for renewal of such license or certificate to the Department of Public
247 Health, giving such person's name in full, such person's residence and
248 business address and such other information as the department
249 requests. Each person holding a license or certificate issued pursuant
250 to section 20-475 or 20-476 shall, annually, during the month of such
251 person's birth, apply for renewal of such license or certificate to the
252 department. Each entity holding a license issued pursuant to section
253 20-475 shall, annually, during the anniversary month of initial
254 licensure, apply for renewal of such license or certificate to the
255 department.

256 Sec. 9. Section 19a-179 of the general statutes is repealed and the
257 following is substituted in lieu thereof:

258 The commissioner shall adopt regulations, in accordance with
259 chapter 54, concerning the methods and conditions for licensure and
260 certification of the operations, facilities and equipment enumerated in

261 section 19a-177 and regulations regarding complaint procedures for
262 the public and any emergency medical service organization. Such
263 regulations shall be in conformity with the policies and standards
264 established by the commissioner. Such regulations shall require that, as
265 an express condition of the purchase of any business holding a
266 primary service area, the purchaser shall agree to abide by any
267 performance standards to which the purchased business was obligated
268 pursuant to its agreement with the municipality. Such regulations shall
269 require that any person submitting an application for certification as
270 an emergency medical technician on or after October 1, 2001, shall
271 submit to state and national criminal history records checks.

272 Sec. 10. Subdivision (d) of section 19a-490 of the general statutes is
273 repealed and the following is substituted in lieu thereof:

274 (d) "Home health care agency" means a public or private
275 organization, or a subdivision thereof, engaged in providing
276 professional nursing services and the following services, available
277 twenty-four hours per day, in the patient's home or a substantially
278 equivalent environment: [Homemaker-home] Home health aide
279 services, [as defined in this section,] physical therapy, speech therapy,
280 occupational therapy or medical social services. The agency shall
281 provide professional nursing services and at least one additional
282 service directly and all others directly or through contract. An agency
283 shall be available to enroll new patients seven days a week, twenty-
284 four hours per day.

285 Sec. 11. Subdivision (f) of section 19a-490 of the general statutes is
286 repealed and the following is substituted in lieu thereof:

287 [(f) "Homemaker-home health aide services" as defined in this
288 section]

289 (f) "Home health aide services" shall not include services provided
290 to assist individuals with activities of daily living when such

291 individuals have a disease or condition that is chronic and stable as
292 determined by a physician licensed in the state of Connecticut.

293 Sec. 12. Subsection (c) of section 19a-491 of the general statutes is
294 repealed and the following is substituted in lieu thereof:

295 (c) For purposes of this chapter, an institution shall include any
296 person or public or private agency which either advertises, arranges
297 for or provides [a homemaker health aide or homemaker-home] home
298 health aide services in a patient's home or a substantially equivalent
299 environment.

300 Sec. 13. Subsection (e) of section 19a-491 of the general statutes is
301 repealed and the following is substituted in lieu thereof:

302 (e) The commissioner may require as a condition of the licensure of
303 home health care agencies and homemaker-home health aide agencies
304 that each agency meet minimum service quality standards. In the
305 event the commissioner requires such agencies to meet minimum
306 service quality standards as a condition of their licensure, [he] the
307 commissioner shall adopt regulations in accordance with the
308 provisions of chapter 54 to define such minimum service quality
309 standards, which shall allow for training of [homemaker-home health
310 care] home health aides by adult continuing education.

311 Sec. 14. Section 19a-491b of the general statutes is repealed and the
312 following is substituted in lieu thereof:

313 (a) Any person who is licensed to establish, conduct, operate or
314 maintain a nursing home shall notify the Commissioner of Public
315 Health immediately if the owner, conductor, operator or maintainer of
316 the home, any person described in subdivision (3) of subsection (a) of
317 section 19a-491a, or any nurse or nurse's aide has been convicted of (1)
318 a felony, as defined in section 53a-25, (2) cruelty to persons under
319 section 53-20, or (3) assault of a victim sixty or older under section 53a-

320 61a; or has been subject to any decision imposing disciplinary action
321 by the licensing agency in any state, the District of Columbia, a United
322 States possession or territory or a foreign jurisdiction. Failure to
323 comply with the notification requirement of this subsection shall
324 subject the licensed person to a civil penalty of not more than one
325 hundred dollars.

326 (b) Each nursing home shall require a person described in
327 subdivision (3) of subsection (a) of section 19a-491a or a nurse or
328 nurse's aide to complete and sign an application form which contains
329 questions as to whether the person has been convicted of any crime
330 specified in subsection (a) of this section or has been subject to any
331 decision imposing disciplinary action as described in said subsection.
332 Any person seeking employment in a position connected with the
333 provision of care in a nursing home who makes a false written
334 statement regarding such prior criminal convictions or disciplinary
335 action shall be guilty of a Class A misdemeanor.

336 (c) On and after October 1, 2001, no nursing home may hire any
337 person for a position as a nurse's aide unless the nursing home obtains
338 a state criminal history records check on such person that has been
339 conducted within twenty-four months of the date of hire. The
340 Department of Public Health shall supply the nursing home with such
341 state criminal history records check. If the department does not have
342 available, in the registry of nurse's aides established under section 20-
343 102bb, a state criminal history records check that has been conducted
344 within such time period, the department shall conduct a state criminal
345 history records check on such person. If such person has provided or
346 submitted to a criminal history records check, the results shall not be
347 subject to disclosure under the Freedom of Information Act, as defined
348 in section 1-200, provided such person may authorize release of the
349 criminal history records check.

350 (d) Notwithstanding the requirements of subsection (c) of this

351 section, a nursing home may employ a person to perform the duties of
352 a nurse's aide subject to the condition of obtaining a state criminal
353 history records check on such person, provided the nursing home has
354 requested a state criminal history records check on such person from
355 the department or has commenced its own state criminal history
356 records check on such person.

357 (e) No nursing home may disclose or use any criminal history
358 background information acquired under this section for any purpose
359 except a determination of employment. A violation of this subsection
360 shall be deemed an unfair or deceptive trade practice under subsection
361 (a) of section 42-110b. Any nursing home that, in good faith, fails to
362 employ or discharges any conditionally employed person based upon
363 information contained in a state criminal history records check
364 obtained pursuant to this section shall be immune from civil and
365 criminal liability that might otherwise be incurred or imposed based
366 on the refusal to hire or discharge.

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

371 (2) The Division of State Police, within the Department of Public
372 Safety, shall assist any nursing home in conducting a state criminal
373 history records check of any person under final consideration for
374 employment by such nursing home as a nurse's aide, shall arrange for
375 the fingerprinting of such person and shall forward such fingerprints
376 to the State Police Bureau of Identification for completion of such state
377 criminal history records check.

378 Sec. 15. This act shall take effect October 1, 2001, except that sections
379 6 and 8 shall take effect the later of October 1, 2001, or the date notice is
380 published by the Commissioner of Public Health in the Connecticut
381 Law Journal indicating that the licensing of athletic trainers and

382 physical therapist assistants is being implemented by the
383 commissioner.

PH *JOINT FAVORABLE SUBST.*

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:

OFA Fiscal Note

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

Affected Agencies: Departments of Public Health, Public Safety, and 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, 2001.

The Department of Public Health will incur an FY 02 cost of approximately \$257,500 to institute certification of an estimated 8,000 home health aides and develop a database of criminal history checks on these same individuals. Included in this sum is \$232,800 to support the salaries of five positions, as follows: 2 Office Assistants, 0.5 Nurse Consultant, 0.5 Special Investigator, 1 Administrative Hearings Attorney, and 1 Licensing Examination Assistant. Also included is \$24,700 for other expenses and equipment costs. In FY 02 and subsequent years a cost of \$248,500 will be incurred as one-time equipment costs will not recur.

A projected FY 02 revenue gain of \$250,000 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 \$200,000 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 Department of Public Safety would conduct a state criminal history records check on each of the 8,000 home health aides. The charge for the state criminal history records check is \$25 (per CGS Section 29-11(c)), which is deposited to the General Fund as revenue. This results in \$200,000 in annual revenue if a criminal history check is done annually. The Criminal History Records Unit conducts 300,000 criminal history records searches per year with 19 staff. In order to avoid adding to the current backlog (2 months), an additional one-half position is required. (This would be added to the one-half position required under a subsequent portion of this bill.) Annual cost for the

one-half position is \$20,000. Law prohibits DPS from charging other state or public agencies for criminal history background checks. 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 Governor's Recommended FY 02 - FY 03 Biennial Budget to implement the home health aide 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.

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

Section 9 of the bill requires persons applying for certification as an emergency medical technician (EMT) on or after October 1, 2001, 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 (Department of Public Safety).

Section 14 prohibits employment of a nurse's aide by a nursing

home after September 30, 2001, 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 02 cost of approximately \$408,900 to implement the criminal history record check program for an estimated 2,300 caregivers, 1,200 EMTs and 6,500 nurse's aides. Included in this sum is \$351,700 to reflect salaries of nine positions, as follows: 5 Clerk Typists, 1 Office Assistants, 1 Health Program Associate, 0.5 Nurse Consultant, 0.5 Special Investigator and 1 Administrative Hearings Attorney. Also included is equipment and other expenses funding of approximately \$57,200. In subsequent years this cost would fall to \$392,700 as one-time equipment expenses would not recur.

The Department of Public Safety is charged under the bill with assisting the DPH in conducting these records checks, to include arranging for the taking of fingerprints. The estimated 1,200 EMT's are required to submit to both a federal and state criminal history records check. The FBI national criminal history records check costs \$24 for each search (\$18 for a volunteer), and DPS would charge \$25 for the state search (\$18 for a volunteer). In addition DPS is required to conduct a state criminal history records check of the estimated 2,300 caregivers and 6,500 nurses aides. This total of 10,000 more state criminal history records checks would result in about \$250,000 in revenue in the first year. Future year revenue would depend on the number of applicants and the renewal requirements. DPS would require another one-half position to conduct these records checks, at a cost of \$20,000, bringing the total DPS staffing requirements under the bill to one position at \$40,000.

No funding has been included under either the DPH's or the DPS's budgets within the Governor's Recommended FY 02 - FY 03 Biennial

Budget 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 6725

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 authorizes DPH 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, caregivers employed by an agency other than as home health aides, and emergency medical technicians to submit to criminal history records checks to work in the state. It requires nursing homes to hire only those nursing aides who have undergone a state criminal record check. The bill also makes technical changes.

EFFECTIVE DATE: October 1, 2001

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 that requires the person's social security number. The initial application and 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.

If the applicant has provided or submitted to a criminal records check under the bill, 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. 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 a home health aide's duties 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 officials 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 learning 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 people with disabilities, and any others required by law.

The bill allows DPH to adopt regulations governing agencies' criminal records checks and abuse reporting.

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 their financial records or assets. But it excludes a home health aide.

DPH must do the check, prior to or within six months of the caregiver's employment, if the agency intending to employ or engage the caregiver asks for it in writing. The bill allows DPH to charge a fee

for the background check that cannot exceed the actual cost of the check. The check does not apply to (1) any state licensed, certified, or registered caregiver acting within his 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.

If the caregiver provides or submits to the records check, the results are not subject to disclosure under FOI, unless the person authorizes their release.

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

NURSE'S AIDES

Under the bill and beginning October 1, 2001, nursing homes can hire only those 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. If the applicant provides or submits to the check, the results are not subject to FOI disclosure unless the individual authorizes it.

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 asked DPH for a state check or has begun its own check.

The bill prohibits a nursing home from disclosing or using any criminal history background information for any purpose except determining employment and makes a violation an unfair or deceptive trade practice. 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 taking and forwarding fingerprints to the State Police Bureau of Identification.

EMERGENCY MEDICAL TECHNICIANS (EMTs)

By law, DPH must adopt regulations on licensure and certification of the operations, equipment, and facilities involved in emergency medical services. The bill requires those regulations to require anyone applying for EMT certification beginning October 1, 2001 to submit to a state and national criminal history records check.

BACKGROUND

Effective Date

PA 00-226 established licensing programs for athletic trainers and physical therapist assistants. These were to take effect on October 1, 2000 or when the public health commissioner published notice that he was implementing the programs, whichever occurred later. The commissioner has not yet published this notice. The bill's separate effective dates for sections 6 and 8, which deal with DPH's regulation of various professions, address this future contingency.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 24 Nay 0