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## **OLR Bill Analysis**

### **sSB 3**

#### ***AN ACT CONCERNING A CRIMINAL HISTORY AND PATIENT ABUSE BACKGROUND SEARCH PROGRAM.***

#### **SUMMARY:**

This bill requires long-term care facilities to ensure that people who will have direct access, or provide direct service, to patients or residents undergo criminal history and patient abuse background searches (background search) before offering employment to or contracting with them to provide long-term care services. It requires the Public Health Department (DPH) to establish a program to facilitate the searches, receive criminal history record check results from the Department of Public Safety (DPS), and notify facilities of people with disqualifying offenses.

The bill prohibits the facilities from employing or contracting with people to provide long-term care services to patients or residents:

1. before receiving the DPH notice of the background search results, except that they may offer conditional employment for up to 60 days based on specified criteria or
2. if a search reveals disqualifying offenses, unless DPH grants a waiver.

The bill also allows the facilities to enter into a contract on a conditional basis before receiving the notification of the search results, but it does not specify the length of any such contract.

The bill makes failure to comply with the criminal history and patient abuse background search provisions a Class C violation, which carries a civil penalty of up to \$1,000.

It requires DPH to adopt implementing regulations. It also makes

technical changes.

EFFECTIVE DATE: July 1, 2011

***Criminal History Record and Background Check Requirement***

With one exception, before offering a job to or contracting for long-term care services with anyone who will have direct access or provide direct services to a patient or resident of the facility, a long-term care facility must require the person to submit to a background search.

The facility does not have to require a search if the person:

1. provides evidence that a background search no more than three years immediately preceding the date of applying for the job or seeking the contract with the facility revealed no disqualifying offense or
2. will be a volunteer at the facility and will not have direct access or provide direct services to a patient or resident.

The bill defines “criminal history and patient abuse background search” or “background search” as (1) state and national criminal history record checks conducted in accordance with state law, (2) a review of DPH’s nurse’s aide registry, and (3) a review of any other registry that DPH specifies and deems necessary for administering a background search program.

***Criminal History and Patient Abuse Background Search Program***

The bill requires DPH to create and maintain a criminal history and patient abuse background search program to facilitate the performance, processing, and analysis of background searches on people who have direct access or provide direct services to patients or residents of long-term care facilities.

The bill defines a “long-term care facility,” as a home health agency, a homemaker-companion agency, an assisted living services agency, an intermediate care facility for the mentally retarded as defined in federal law, a chronic disease hospital, a DPH-licensed or federally

certified agency providing hospice care, or a nursing home as defined in state law. (State law does not define nursing home, but it defines a “nursing home facility” as a nursing home or residential care home.)

“Direct access” means physical access to a patient or resident and “direct services” means services provided to a patient or resident, which access or service gives the provider an opportunity to commit abuse or neglect or misappropriate the patient’s or resident’s property.

DPH must prescribe how (1) a facility must review the registries, including requiring the facility to report the review results to DPH, and (2) individuals must submit to state and national criminal history record checks, including requiring DPS to report the results of such checks to DPH.

### ***Disqualifying Offenses and Waivers***

DPH must review the criminal history record reports that DPS provides and the results of the registry reviews provided by the facilities. If a report shows that an individual has a disqualifying offense, DPH must notify him or her by certified mail, return receipt requested, of the disqualifying offense and the opportunity to file a written request for a waiver, which would allow him or her to be employed by or enter into contract with a long-term care facility.

The bill defines a “disqualifying offense” as a (1) substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency under an investigation conducted in accordance with federal Medicare and Medicaid laws or (2) conviction for certain federal crimes.

The federal crimes are:

1. patient neglect or abuse in connection with the delivery of a health care item or service;
2. a crime related to the delivery of an item or service pertaining to the Medicare program or any state health care program receiving certain federal funds (e.g., Medicaid); or

3. any felony conviction relating to health care fraud committed after August 21, 1996.

### **Waivers**

An individual has up to 30 days after DPH mails a notice to file a waiver request. DPH has up to 15 business days after receiving the request to mail a written determination indicating whether it will grant the request. The 15-day deadline does not apply to instances in which an individual challenges the accuracy of the information obtained from the background search. DPH may grant a waiver to an individual who identifies mitigating circumstances surrounding the disqualifying offense, including:

1. inaccuracy in the information obtained,
2. lack of a relationship between the disqualifying offense and the position for which the individual has applied,
3. evidence that the individual has pursued or achieved rehabilitation with regard to the disqualifying offense, or
4. that substantial time has elapsed since committing the disqualifying offense.

DPH and its employees are immune from civil or criminal liability that might otherwise be incurred or imposed for good faith conduct in granting waivers.

### **Notification of Facility**

After DPH reviews the background check and patient abuse reports, it must notify, in writing, the long-term care facility to which the individual applied to get a job or a contract whether (1) the report contains any disqualifying offense, (2) the individual provided any information about mitigating circumstances surrounding the offense, and (3) DPH granted a waiver.

If DPH notifies a facility that a person covered by the bill has a disqualifying offense and has not received a DPH waiver, the facility

cannot employ or contract with him or her. And if DPH grants a waiver, the bill allows but does not require a facility to employ or enter into a contract with an individual granted a waiver. The provisions apply notwithstanding state law that generally forbids the state and its agencies (except for law enforcement agencies) from denying felons employment, occupational licenses, or permission to engage in state-regulated professions without examining (1) the relationship between the crime committed and the job or license that the person is being considered for, (2) the convicted person's degree of rehabilitation, and (3) the time elapsed since conviction or release (CGS § 46a-80).

The bill prohibits a facility from hiring or entering into a contract with an individual required to undergo a background search until it receives the DPH notification. But the facility may employ or enter into a contract on a conditional basis with such an individual before it receives DPH notification if:

1. conditional employment does not last for more 60 days;
2. the facility has begun the required review and the individual has applied for the required checks;
3. the individual is subject to direct, on-site supervision; and
4. the individual affirms in a signed statement that (a) he or she has not committed a disqualifying offense and (b) a disqualifying offense reported in the background search constitutes good cause for termination and a facility may terminate the individual on this ground.

(It is unclear how long the contracts could last because the conditions specified above appear to apply to employment only.)

### ***Program Implementation***

DPH may phase in implementation of the criminal history and patient abuse background search program by type of long-term care facility. For each category, implementation must be on the date the DPS commissioner publishes notice in the *Connecticut Law Journal*

indicating that he is implementing the program for the facility type.

**Homemaker-Companion Agency Background Check.** By law, homemaker-companion agencies must require their employees to submit to a comprehensive background check. The bill replaces the requirement on the date DPH publishes notice in the *Connecticut Law Journal* of its implementation of the criminal history and patient abuse background search program for homemaker-companion agencies.

**Citations for Violations of Nursing Home Laws**

By law, the DPH commissioner must issue a citation against any nursing home that violates a statute or regulation relating to nursing home operation or maintenance. There are two types of citations, which are based on the nature of the violation.

Class A violations are those that present an immediate danger of death or serious harm to any patient in a nursing home, and carry an automatic penalty of not less than \$3,000 per day. Class B violations present a probability of death or serious harm to a patient in the reasonably foreseeable future. If not corrected within 15 days of the final order, class B violations carry a penalty of \$1,000 to \$3,000 per day.

The bill establishes class C violations, which are conditions that the DPH commissioner determines constitute a failure to comply with the bill's background check provisions, but are not class A or B violations. Class C violations carry a civil penalty of up to \$1,000.

**COMMITTEE ACTION**

Aging Committee

Joint Favorable Substitute Change of Reference  
Yea 11 Nay 0 (03/10/2011)

Public Health Committee

Joint Favorable Substitute Change of Reference  
Yea 28 Nay 0 (03/28/2011)

Judiciary Committee

Joint Favorable

Yea 42 Nay 0 (04/14/2011)