



General Assembly

January Session, 2011

Amendment

LCO No. 8145

SB0000308145SD0

Offered by:
SEN. PRAGUE, 19th Dist.

To: Subst. Senate Bill No. 3

File No. 723

Cal. No. 440

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

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective January 1, 2012*) (a) As used in this
4 section:

5 (1) "Criminal history and patient abuse background search" or
6 "background search" means (A) a review of the registry of nurse's
7 aides maintained by the Department of Public Health pursuant to
8 section 20-102bb of the general statutes, (B) checks of state and national
9 criminal history records conducted in accordance with section 29-17a
10 of the general statutes, and (C) a review of any other registry specified
11 by the Department of Public Health which the department deems
12 necessary for the administration of a background search program.

13 (2) "Direct access" means physical access to a patient or resident of a
14 long-term care facility that affords an individual with the opportunity

15 to commit abuse or neglect against or misappropriate the property of a
16 patient or resident.

17 (3) "Disqualifying offense" means a conviction of any crime
18 described in 42 USC 1320a-7(a)(1), (2), (3) or (4) or a substantiated
19 finding of neglect, abuse or misappropriation of property by a state or
20 federal agency pursuant to an investigation conducted in accordance
21 with 42 USC 1395i-3(g)(1)(C) or 42 USC 1396r(g)(1)(C).

22 (4) "Long-term care facility" means any facility, agency or provider
23 that is a nursing home, as defined in section 19a-521 of the general
24 statutes, a home health agency, as defined in section 19a-490 of the
25 general statutes, an assisted living services agency, as defined in
26 section 19a-490 of the general statutes, an intermediate care facility for
27 the mentally retarded, as defined in 42 USC 1396d(d), a chronic disease
28 hospital, as defined in section 19a-550 of the general statutes, or an
29 agency providing hospice care which is licensed to provide such care
30 by the Department of Public Health or certified to provide such care
31 pursuant to 42 USC 1395x.

32 (b) (1) On or before July 1, 2012, the Department of Public Health
33 shall create and implement a criminal history and patient abuse
34 background search program, within available appropriations, in order
35 to facilitate the performance, processing and analysis of the criminal
36 history and patient abuse background search of individuals who have
37 direct access.

38 (2) The Department of Public Health shall develop a plan to
39 implement the criminal history and patient abuse background search
40 program, in accordance with this section. In developing such plan, the
41 department shall (A) consult with the Commissioners of Emergency
42 Services and Public Protection, Developmental Services, Mental Health
43 and Addiction Services, Social Services and Consumer Protection, or
44 their designees, the State Long-Term Care Ombudsman, or a designee,
45 the chairperson for the Board of Pardons and Paroles, or a designee, a
46 representative of each category of long-term care facility and

47 representatives from any other agency or organization the
48 Commissioner of Public Health deems appropriate, (B) evaluate factors
49 including, but not limited to, the administrative and fiscal impact of
50 components of the program on state agencies and long-term care
51 facilities, background check procedures currently used by long-term
52 care facilities, federal requirements pursuant to Section 6201 of the
53 Patient Protection and Affordable Care Act, P.L. 111-148, as amended
54 from time to time, and the effect of full and provisional pardons on
55 employment, and (C) outline (i) an integrated process with the
56 Department of Public Safety to cross-check and periodically update
57 criminal information collected in criminal databases, (ii) a process by
58 which individuals with disqualifying offenses can apply for a waiver,
59 and (iii) the structure of an Internet-based portal to streamline the
60 criminal history and patient abuse background search program. The
61 Department of Public Health shall submit such plan to the joint
62 standing committees of the General Assembly having cognizance of
63 matters relating to aging, appropriations and the budgets of state
64 agencies, and public health, in accordance with the provisions of
65 section 11-4a of the general statutes, not later than February 1, 2012.

66 (c) (1) Except as provided in subdivision (2) of this subsection, each
67 long-term care facility, prior to extending an offer of employment to or
68 entering into a contract for the provision of long-term care services
69 with any individual who will have direct access, or prior to allowing
70 any individual to have direct access while volunteering at such long-
71 term care facility, shall require that such individual submit to a
72 background search. The Department of Public Health shall prescribe
73 the manner by which (A) long-term care facilities perform the review
74 of (i) the registry of nurse's aides maintained by the department
75 pursuant to section 20-102bb of the general statutes, and (ii) any other
76 registry specified by the department, including requiring long-term
77 care facilities to report the results of such review to the department,
78 and (B) individuals submit to state and national criminal history
79 records checks, including requiring the Department of Public Safety to
80 report the results of such checks to the Department of Public Health.

81 (2) No long-term care facility shall be required to comply with the
82 provisions of this subsection if the individual provides evidence to the
83 long-term care facility that such individual submitted to a background
84 search conducted pursuant to subdivision (1) of this subsection not
85 more than three years immediately preceding the date such individual
86 applies for employment, seeks to enter into a contract or begins
87 volunteering with the long-term care facility and that the prior
88 background search confirmed that the individual did not have a
89 disqualifying offense.

90 (d) (1) The Department of Public Health shall review all reports
91 provided to the department pursuant to subsection (c) of this section. If
92 any such report contains evidence indicating that an individual has a
93 disqualifying offense, the department shall provide notice to the
94 individual and the long-term care facility indicating the disqualifying
95 offense and providing the individual with the opportunity to file a
96 request for a waiver pursuant to subdivisions (2) and (3) of this
97 subsection.

98 (2) An individual may file a written request for a waiver with the
99 department not later than thirty days after the date the department
100 mails notice to the individual pursuant to subdivision (1) of this
101 subsection. The department shall mail a written determination
102 indicating whether the department shall grant a waiver pursuant to
103 subdivision (3) of this subsection not later than fifteen business days
104 after the department receives the written request from the individual,
105 except that said time period shall not apply to any request for a waiver
106 in which an individual challenges the accuracy of the information
107 obtained from the background search.

108 (3) The department may grant a waiver from the provisions of
109 subsection (e) of this section to an individual who identifies mitigating
110 circumstances surrounding the disqualifying offense, including (A)
111 inaccuracy in the information obtained from the background search,
112 (B) lack of a relationship between the disqualifying offense and the
113 position for which the individual has applied, (C) evidence that the

114 individual has pursued or achieved rehabilitation with regard to the
115 disqualifying offense, or (D) that substantial time has elapsed since
116 committing the disqualifying offense. The department and its
117 employees shall be immune from liability, civil or criminal, that might
118 otherwise be incurred or imposed, for good faith conduct in granting
119 waivers pursuant to this subdivision.

120 (4) After completing a review pursuant to subdivision (1) of this
121 subsection, the department shall notify in writing the long-term care
122 facility to which the individual has applied for employment or with
123 which the individual seeks to enter into a contract or volunteer (A) of
124 any disqualifying offense and any information the individual provided
125 to the department regarding mitigating circumstances surrounding
126 such offense, or of the lack of a disqualifying offense, and (B) whether
127 the department granted a waiver pursuant to subdivision (3) of this
128 subsection.

129 (e) Notwithstanding the provisions of section 46a-80 of the general
130 statutes, no long-term care facility shall employ an individual required
131 to submit to a background search, contract with any such individual to
132 provide long-term care services or allow such individual to volunteer
133 if the long-term care facility receives notice from the department that
134 the individual has a disqualifying offense in the individual's
135 background search and the department has not granted a waiver
136 pursuant to subdivision (3) of subsection (d) of this section. A long-
137 term care facility may, but is not obligated to, employ, enter into a
138 contract with or allow to volunteer an individual who was granted a
139 waiver pursuant to said subdivision (3).

140 (f) (1) Except as provided in subdivision (2) of this subsection, a
141 long-term care facility shall not employ, enter into a contract with or
142 allow to volunteer any individual required to submit to a background
143 search until the long-term care facility receives notice from the
144 Department of Public Health pursuant to subdivision (4) of subsection
145 (d) of this section.

146 (2) A long-term care facility may employ, enter into a contract with
147 or allow to volunteer an individual required to submit to a background
148 search on a conditional basis before the long-term care facility receives
149 notice from the department that such individual does not have a
150 disqualifying offense, provided: (A) The employment or contractual or
151 volunteer period on a conditional basis shall last not more than sixty
152 days, (B) the long-term care facility has begun the review required
153 under subsection (c) of this section and the individual has submitted to
154 checks pursuant to subsection (c) of this section, (C) the individual is
155 subject to direct, on-site supervision during the course of such
156 conditional employment or contractual or volunteer period, and
157 (D) the individual, in a signed statement (i) affirms that the individual
158 has not committed a disqualifying offense, and (ii) acknowledges that
159 a disqualifying offense reported in the background search required by
160 subsection (c) of this section shall constitute good cause for termination
161 and a long-term care facility may terminate the individual if a
162 disqualifying offense is reported in said background search.

163 (g) Notwithstanding the provisions of subsection (b) of this section,
164 the department may phase in implementation of the criminal history
165 and patient abuse background search program by category of long-
166 term care facility. No long-term care facility shall be required to
167 comply with the provisions of subsections (c), (e) and (f) of this section
168 until the date notice is published by the Commissioner of Public
169 Health in the Connecticut Law Journal indicating that the
170 commissioner is implementing the criminal history and patient abuse
171 background search program for the category of such long-term care
172 facility.

173 (h) The department shall adopt regulations, in accordance with the
174 provisions of chapter 54 of the general statutes, to implement the
175 provisions of this section. The department may implement policies and
176 procedures consistent with the provisions of this section while in the
177 process of adopting such policies and procedures as regulation,
178 provided notice of intention to adopt regulations is printed in the
179 Connecticut Law Journal not later than twenty days after the date of

180 implementation. Such policies and procedures shall be valid until the
181 time final regulations are effective.

182 Sec. 2. Section 20-670 of the general statutes is repealed and the
183 following is substituted in lieu thereof (*Effective January 1, 2012*):

184 As used in sections 20-670 to 20-680, inclusive, as amended by this
185 act:

186 (1) "Certificate" means a certificate of registration issued under
187 section 20-672.

188 (2) "Commissioner" means the Commissioner of Consumer
189 Protection or any person designated by the commissioner to
190 administer and enforce the provisions of sections 20-670 to 20-680,
191 inclusive, as amended by this act.

192 (3) "Companion services" means nonmedical, basic supervision
193 services to ensure the well-being and safety of a person in such
194 person's home.

195 (4) "Employee" means any person employed by, or who enters into a
196 contract to perform services for, a homemaker-companion agency,
197 including, but not limited to, temporary employees, pool employees
198 and persons treated by such agency as independent contractors.

199 (5) "Comprehensive background check" means a background
200 investigation of a prospective employee performed by a homemaker-
201 companion agency, that includes: (A) A review of any application
202 materials prepared or requested by the agency and completed by the
203 prospective employee; (B) an in-person interview of the prospective
204 employee; (C) verification of the prospective employee's Social
205 Security number; (D) if the position applied for within the agency
206 requires licensure on the part of the prospective employee, verification
207 that the required license is in good standing; (E) a check of the registry
208 established and maintained pursuant to section 54-257; (F) a review of
209 criminal conviction information obtained through a search of current

210 criminal matters of public record in this state based on the prospective
211 employee's name and date of birth; (G) if the prospective employee has
212 resided in this state less than three years prior to the date of the
213 application with the agency, a review of criminal conviction
214 information from the state or states where such prospective employee
215 resided during such three-year period; and (H) a review of any other
216 information that the agency deems necessary in order to evaluate the
217 suitability of the prospective employee for the position.

218 [(5)] (6) "Homemaker services" means nonmedical, supportive
219 services that ensure a safe and healthy environment for a person in
220 such person's home, such services to include assistance with personal
221 hygiene, cooking, household cleaning, laundry and other household
222 chores.

223 [(6)] (7) "Homemaker-companion agency" means (A) any public or
224 private organization [, employing] that employs one or more persons
225 [that] and is engaged in the business of providing companion services
226 or homemaker services, or (B) any registry. Homemaker-companion
227 agency shall not include a home health care agency, as defined in
228 subsection (d) of section 19a-490, or a homemaker-home health aide
229 agency, as defined in subsection (e) of section 19a-490.

230 (8) "Registry" means any person or entity engaged in the business of
231 supplying or referring an individual to or placing an individual with a
232 consumer to provide homemaker or companion services provided by
233 such individual, when the individual providing such services is either
234 (A) directly compensated, in whole or in part, by the consumer, or (B)
235 treated, referred to or considered by such person or entity as an
236 independent contractor.

237 [(7)] (9) "Service plan" means a written document provided by a
238 homemaker-companion agency to a person utilizing services provided
239 by such agency, that specifies the anticipated scope, type, frequency
240 and duration of homemaker or companion services that are to be
241 provided by such agency for the benefit of the person.

242 Sec. 3. Subsection (a) of section 20-672 of the general statutes is
243 repealed and the following is substituted in lieu thereof (*Effective*
244 *January 1, 2012*):

245 (a) Any person seeking a certificate of registration as a homemaker-
246 companion agency shall apply to the Commissioner of Consumer
247 Protection, in writing, on a form provided by the commissioner. The
248 application shall include the applicant's name, residence address,
249 business address, business telephone number and such other
250 information as the commissioner may require. An applicant shall also
251 be required to submit to state and national criminal history records
252 checks in accordance with section 29-17a and to certify under oath to
253 the commissioner that: (1) Such agency complies with the
254 requirements of section 20-678, as amended by this act, concerning
255 employee comprehensive background checks, (2) such agency
256 provides all persons receiving homemaker or companion services with
257 a written individualized contract or service plan that specifically
258 identifies the anticipated scope, type, frequency and duration of
259 homemaker or companion services provided by the agency to the
260 person, (3) such agency maintains a surety bond, and (4) all records
261 maintained by such agency shall be open, at all reasonable hours, for
262 inspection, copying or audit by the commissioner.

263 Sec. 4. Subsection (a) of section 20-675 of the general statutes is
264 repealed and the following is substituted in lieu thereof (*Effective*
265 *January 1, 2012*):

266 (a) The Commissioner of Consumer Protection may revoke, suspend
267 or refuse to issue or renew any certificate of registration as a
268 homemaker-companion agency or place an agency on probation or
269 issue a letter of reprimand for: (1) Conduct by the agency, or by an
270 employee of the agency while in the course of employment, of a
271 character likely to mislead, deceive or defraud the public or the
272 commissioner; [or] (2) engaging in any untruthful or misleading
273 advertising; or (3) failing to perform a comprehensive background
274 check of a prospective employee or maintain a copy of materials

275 obtained during a comprehensive background check, as required by
276 section 20-678, as amended by this act.

277 Sec. 5. Section 20-678 of the general statutes is repealed and the
278 following is substituted in lieu thereof (*Effective January 1, 2012*):

279 [Each homemaker-companion agency shall require that any
280 employee of such agency hired on or after October 1, 2006,] On or after
281 January 1, 2012, each homemaker-companion agency, prior to
282 extending an offer of employment or entering into a contract with a
283 prospective employee, shall require such prospective employee to
284 submit to a comprehensive background check. In addition, each
285 homemaker-companion agency shall require that [any employee of
286 such agency hired on or after October 1, 2006,] such prospective
287 employee complete and sign a form which contains questions as to
288 whether the [current or] prospective employee was convicted of a
289 crime involving violence or dishonesty in a state court or federal court
290 in any state; or was subject to any decision imposing disciplinary
291 action by a licensing agency in any state, the District of Columbia, a
292 United States possession or territory or a foreign jurisdiction. Any
293 [employee of a homemaker-companion agency hired on or after
294 October 1, 2006,] prospective employee who makes a false written
295 statement regarding such prior criminal convictions or disciplinary
296 action shall be guilty of a class A misdemeanor. Each homemaker-
297 companion agency shall maintain a paper or electronic copy of any
298 materials obtained during the comprehensive background check and
299 shall make such records available for inspection upon request of the
300 Department of Consumer Protection.

301 Sec. 6. (NEW) (*Effective January 1, 2012*) (a) As used in this section,
302 "comprehensive background check" means a background investigation
303 performed by a home health agency, as defined in subsection (k) of
304 section 19a-490 of the general statutes, of an applicant for employment
305 that includes, but is not limited to: (1) A review of any application
306 materials prepared or requested by the agency and completed by the
307 applicant; (2) an in-person interview of the applicant; (3) verification of

308 the applicant's Social Security number; (4) if the position applied for
309 within the agency requires licensure on the part of the applicant,
310 verification that the required license is in good standing; (5) a check of
311 the registry established and maintained pursuant to section 54-257 of
312 the general statutes; (6) a review of criminal conviction information
313 obtained through a search of current criminal matters of public record
314 in this state based on the applicant's name and date of birth; (7) if the
315 applicant has resided in this state less than three years prior to the date
316 of the application for employment, a review of criminal conviction
317 information from the state or states where such applicant resided
318 during such three-year period; and (8) a review of any other
319 information that the agency deems necessary in order to evaluate the
320 suitability of the applicant for the position.

321 (b) On or after January 1, 2012, each home health agency, prior to
322 extending an offer of employment to an applicant for employment
323 with the agency, shall require such applicant to submit to a
324 comprehensive background check. In addition, each home health
325 agency shall require that any such applicant complete and sign a form
326 disclosing whether the applicant was subject to any decision imposing
327 disciplinary action by a licensing agency in any state, the District of
328 Columbia, a United States possession or territory or a foreign
329 jurisdiction. Any applicant who makes a false statement regarding
330 such prior disciplinary action with intent to mislead the home health
331 agency shall be guilty of a class A misdemeanor.

332 (c) The provisions of this section shall cease to be effective on the
333 date the Commissioner of Public Health publishes notice in the
334 Connecticut Law Journal of the department's implementation of the
335 criminal history and patient abuse background search program for
336 home health agencies in accordance with the provisions of section 1 of
337 this act."

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>January 1, 2012</i>	New section
Sec. 2	<i>January 1, 2012</i>	20-670
Sec. 3	<i>January 1, 2012</i>	20-672(a)
Sec. 4	<i>January 1, 2012</i>	20-675(a)
Sec. 5	<i>January 1, 2012</i>	20-678
Sec. 6	<i>January 1, 2012</i>	New section