State of Michigan

U. S. Senate Special Committee on Aging

The Nursing Home Reform Act Turns Twenty: What Has Been Accomplished, and What Challenges Remain?

Written Testimony

of

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May 2, 2007

Thank you, Senators Kohl and Smith and the Senate Special Committee on Aging for this opportunity to testify before you today on Michigan's Workforce Background Check Program.

My name is Orlene Christie, and I am the Director of the Legislative and Statutory Compliance Office in the Michigan Department of Community Health. I oversee the Workforce Background Check Program.

In 2004, Governor Jennifer Granholm and the Michigan Department of Community Health (MDCH) Director Janet Olszewski proposed strong requirements to assure the health and safety of Michigan citizens in long-term care facilities. This project is a priority for the Governor and the Department Director. Working cooperatively with the Michigan Legislature, the Office of Attorney General, and the Centers for Medicaid and Medicare Services (CMS), Michigan successfully implemented the Workforce Background Check Program. Through a competitive process, Michigan secured from CMS a $3.5 million grant to create an effective statewide background check system.

Through the passage of Public Acts 27 and 28 of 2006, Michigan laws were enhanced and improved to require all applicants for employment that would have direct access to our most vulnerable populations – the elderly and disabled - to undergo a background check. Additionally, all employees who were hired before the effective date of April 1, 2006, would need to be fingerprinted within 24 months of the enactment of the laws.

Before the new laws were passed, only some employees in nursing homes, county medical care facilities, homes for the aged, and adult foster care facilities required some type of background check. Prior to 2006, the background checks were less comprehensive and primarily included a "name-based" check of the Internet Criminal History Tool (ICHAT). The FBI fingerprint check was only required for employees residing in Michigan for less than three (3) years. The previous law also did not require all employees with direct access to residents in long-term care facilities to undergo a background check. Further, for those persons who were subject to a background check, there was no systematic process across the multiple health and human service agencies to conduct the checks, to disseminate findings, or to follow through on results.

With Michigan's expansion of the laws, all individuals with direct access to residents' personal information, financial information, medical records, treatment information or any other identifying information are now also required to be part of Michigan's Workforce Background Check Program in addition to individuals providing direct services to patients. The scope of the checks was also enhanced to include hospice, psychiatric hospitals, and hospitals with swing beds, home health, and intermediate care facility/mental retardation (ICFs/MR).

How Our Program/System Works

Michigan created a Web based application that integrates the databases for the available registries and provides a convenient and effective mechanism for conducting criminal history checks on prospective employees, current employees, independent contractors and those granted clinical privileges in facilities and agencies covered under the new laws.

Further, the online workforce background check system is designed to eliminate unnecessary fingerprinting through a screening process.

As of April 1, 2006, 98,625 applicants had been screened through Michigan's Workforce Background Check Program. Of the 61,474 applicants that prompted the full background check, 3,262 were deemed unemployable and excluded from potential hiring pools due to information found on state lists such as ICHAT, (U.S. HHS Exclusion List) OIG exclusion list, the nurse aid registry, the sex offender registry, the offender tracking information system, and the FBI list.

The applicants that have been excluded from employment are not the types of people Michigan could ever allow to work with our most vulnerable citizens. We have prevented hardened criminals that otherwise would have access to our vulnerable population from employment.

As Michigan's demographic profile mirrors that of the nation, the offenses that disqualify individuals from employment in long-term care under the new laws are expected to also be similar across the United States.

Of the criminal history reports examined, fraudulent activity and controlled substance violations account for 25 percent of all disqualifying crimes. Fraudulent activity includes such things as embezzlement, identity theft, and credit card fraud. This is particularly alarming giving the projected increase in financial abuse of the elderly.

Accessible to long-term care providers through a secure ID and password, a provider is easily able to log onto the workforce background check online system to conduct a check of a potential employee. If no matches are found on the registries, the applicant goes to an independent vendor for a digital live scan of their fingerprints. The prints are then submitted to the Michigan State Police and then to the FBI. If there is a "hit" on the state or national database search, a notice is sent to either the Michigan Department of Community Health or the Michigan Department of Human Services for staff analysts to examine the applicant's criminal history.

Michigan has also implemented a "rap back" system where the Michigan State Police notifies one of the two state agencies of a subsequent arrest and in turn the agency notifies the employer. This way we can ensure that in real time, as soon as the criminal history record is updated (arrest, charge or conviction), the department and employer are also notified.

<u>Conclusion</u>

As a result of Michigan's Workforce Background Check Program, the health and safety of Michigan's vulnerable population is protected by ensuring that adequate safeguards are in place for background screenings of direct care service workers.

While the vast majority of health care workers are outstanding individuals who do a wonderful job caring for people in need, we are extremely pleased that Michigan's Workforce Background Check Program has stopped more than 3,000 people with criminal histories from possibly preying on our most vulnerable citizens. By building an appeals process, we have also developed a fair system for reviewing inaccurate criminal records or convictions.

As you can see, Michigan has been leading the way in the area of employee background checks. As I indicated, this project has been a priority of Governor Jennifer Granholm and Michigan Department of Community Health Director Janet Olszewski. We appreciate this opportunity to share this information with you today and look forward to our continued cooperation on this vital topic.

Thank you.