

Testimony
Senate Bill Number 2117 - Department of Human Services
Senate Judiciary Committee
Senator Kelly Armstrong, Chairman
January 4, 2017

Chairman Armstrong, and members of the Senate Judiciary Committee, I am Dawn Mock, Medicaid Program Integrity Administrator for the Department of Human Services (Department). I appear before you to support Senate Bill 2117, which was introduced on behalf of the Department.

The proposed changes in Sections 1 and 2 of the Bill are to ensure that the Department is in compliance with Internal Revenue Service (IRS) requirements and federal regulation in regards to criminal history record checks.

Page 1, lines 13 and 14 of this Bill adds the ability for the Department to conduct criminal history record checks on a job applicant. Previously, the Department was conducting criminal history record checks only upon hiring the employee. This change is also required for the Department to be in compliance with IRS Publication 1075 and the Internal Revenue Code 6103(p)(4) (IRS Code) safeguard requirements through the identification and mitigation of any risk of loss, breach, or misuse of Federal Tax Information (FTI) held by external government agencies that requires a criminal history record check on individuals that will be granted access to IRS FTI data. The Department's Medicaid program, Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF) program, and Child Support program all have access to FTI received from the IRS.

Page 1, lines 15 through 18 of this Bill adds the ability for the Department to conduct criminal history record checks on job applicants of the county social service agencies and the department's and county social service agencies' contractors and contractor's subcontractors that have access to FTI received from the IRS. This change is required for the Department to be in compliance with IRS Code. The Department anticipates approximately two hundred and fifty criminal history record checks will be required during the 2017-2019 biennium.

Page 1, lines 19 through 23; and Page 2, lines 1 and 2 of this Bill establish that the criminal history record checks conducted under subsection 1 and 2 of section 50-06-01.9 are valid for ten years. This change is required for the Department to be in compliance with IRS Code.

Page 2, lines 10 through 12 of this Bill add the authority for the Department to conduct criminal history record checks on Medicaid services applicant providers, Medicaid services providers, staff members, or an individual with a five percent or more ownership interest in the applicant provider or provider. This change is required for the Department to be in compliance with 42 C.F.R. 455.434. Through rulemaking, the Department will apply the criminal history record checks to "high risk" individuals. Examples of "high risk" individuals are: (1) newly enrolling home health agencies; (2) newly enrolling durable medical equipment, prosthetics, orthotics suppliers; and (3) new or revalidating provider types that the Department categorizes as "high risk". The Department will notify an individual if they are subject to a criminal history record check as a "high risk" individual. The Department anticipates that no more than thirty criminal history record checks will be required during the 2017-2019 biennium.

Page 2, lines 16 through 22 of this Bill sets forth that upon a determination by the Department, a Medicaid provider applicant, a Medicaid provider, staff members, or an individual with a five percent or more ownership interest shall secure two sets of fingerprints and provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law.

Page 2, lines 23 and 24 of this Bill establishes a timeline for the applicant provider or provider to assure all necessary information is provided to the Department.

Page 2, lines 25 through 29 of this Bill require the Department to submit all necessary information and fingerprints to the Bureau of Criminal Investigations (BCI).

Page 2, lines 30 and 31; and page 3, lines 1 through 6 of this Bill require BCI to request a nationwide background check from the Federal Bureau of Investigation (FBI), BCI to provide the response to the Department, and the Department to provide a copy of the response to the applicant provider or provider. The Department has prepared an [amendment](#) to remove "The department shall provide a copy of any response received from the bureau of criminal investigation to the applicant provider or provider" on page 3, lines 5 and 6 as such disclosure is not permitted by the FBI.

Page 3, lines 7 through 11 of this Bill establish that a law enforcement agency shall take the individual's fingerprints.

Page 3, lines 12 through 16 of this Bill sets forth who is required to pay for the cost of securing fingerprints, any criminal history record information, and a nationwide background check.

Page 3, lines 17 through 20 of this Bill establishes the Department's ability to charge up to thirty dollars for the purpose of processing the background investigations and a law enforcement agency's ability to charge a reasonable fee to offset the cost of the fingerprinting.

Page 3, lines 21 through 27 of this Bill establishes the Department's ability to use the background information findings to determine approval or termination of enrollment as a Medicaid services provider and the consequences of the denial or termination based on the background information findings.

Page 3, lines 28 and 29 of this Bill declares this Act to be an emergency measure and for it to become effective on July 1, 2017.

This concludes my testimony. I would be happy to answer any questions the committee may have. Thank you.