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FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/09

SPONSOR Chavez, E. LAST UPDATED 2/19/09 HB 414/aHBIC

SHORT TITLE Occupational Therapy License Background Check SB _____

ANALYST Sanchez, C.

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Regulation and Licensing Department (RLD)
 Commission on Higher Education (CHE)

SUMMARY

Synopsis of HBIC Amendment

The House Business and Industry Committee amends the following sections of HB 414:

- on page 1, line 19, it strikes "may" and inserts in lieu thereof "shall".
- on page 1, line 20, it strike "new".

Replacing the "may" to "shall" makes the statute stronger and thus requires the Board to implement background checks.

By striking the word "new", the amendment mandates background checks for all licenses, not just for new licenses.

Criminal background check for all licensees will help to disqualify some dangerous or otherwise inappropriate licensees who might otherwise continue working and causing harm to clients.

Synopsis of Original Bill

House Bill 414 amends the Occupational Therapy Act, NMSA 1978, § 61-12A-1 through 61-12A-24, by adding a new section that would authorize the Board of Examiners for Occupational Therapy (the “Board”) to adopt rules that provide for criminal background checks for all new licensees. Any rules adopted by the Board pursuant to this new provision would include provisions requiring applicants for licensure to provide criminal history background checks and fingerprint cards, and assessment of a fingerprint and background check fee not to exceed \$75. The bill does not mandate that all applicants for licensure must submit criminal background check or fingerprint cards. It simply states that “[t]he board may adopt rules that provide for criminal background checks.”

FISCAL IMPLICATIONS

According to the AGO, denial of applicants for licensure based on the results of a criminal background check or fingerprinting card may lead to more referrals from the Board to the Attorney General for administrative prosecution, which may result in additional staff time dedicated to a few additional prosecutions a year.

SIGNIFICANT ISSUES

According to RLD, the requirement of background checks is a public safety concern. Licensees in this profession frequently work in closed-door areas with vulnerable patients, including minors.

HB 414 will not alter the board’s current adherence to the Criminal Offender Employment Act which allows applicants with a criminal conviction to receive a license as long as the offense was not of a violent nature, related to drug trafficking, or closely related to their profession.

The current requirement for disclosure of previous convictions does not adequately protect the public.

Background checks are currently required by the State Medical Board, the Gaming Control Board, the Accountancy Board, and the Private Investigations Advisory Board.

According to RLD, the legislature should add language to this bill that would allow Board to request criminal background checks for all new and current licensees.

PERFORMANCE IMPLICATIONS

Enforcing the mandates of this legislation will require close cooperation between RLD, DPS, AGO and the FBI. Because RLD staff already implements background checks for the boards and commissions division, the process is in place and would not require additional staff to continue meeting the current performance measures.

ADMINISTRATIVE IMPLICATIONS

Costs associated with this requirement will be covered by the applicant not to exceed \$75. The current cost is approximately \$30.

TECHNICAL ISSUES

This bill requires background checks only for new licensees, and not for those seeking renewal of their license.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The board will not have statutory authority to conduct background checks and will continue to rely on the applicant to disclose criminal activity.

CS/svb:mt