

FISCAL NOTE
Requested by Legislative Council
12/23/2016

Amendment to: SB 2117

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB2117 provides for criminal history record checks to be conducted for Medicaid services applicants, providers, and staff members; and for job applicants for Dept of Hmn Serv, County social services, contractors and subcontractors that have access to Federal Tax Information received from the IRS.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

SB2117 has no fiscal impact. The additional work generated by this bill will be assigned to current Department staff. The cost of the additional background checks will be offset by the Department's ability to charge a fee for the background check.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*
- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*
- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Jennifer Scheet

Agency: Dept of Human Services

Telephone: 701-328-4608

Date Prepared: 01/03/2017

FISCAL NOTE
Requested by Legislative Council
12/23/2016

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Name: Jennifer Scheet

Agency: Dept of Human Services

Telephone: 701-328-4608

Date Prepared: 01/03/2017

FISCAL NOTE
Requested by Legislative Council
12/23/2016

Bill/Resolution No.: SB 2117

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	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
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Expenditures						
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Name: Jennifer Scheet

Agency: Dept of Human Services

Telephone: 701-328-4608

Date Prepared: 01/03/2017

2017 SENATE JUDICIARY

SB 2117

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2117
1/4/2017
26568

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to criminal history record checks for Medicaid services applicants, providers, and staff members; to amend and reenact section 50-06-01.9 of the North Dakota Century Code, relating to criminal history record checks for job applicants, department staff, county employees, contractors, and Medicaid services applicants, providers, and staff members; to provide an effective date; and to declare an emergency.

Minutes: **Testimony attached #**

1

Chairman Armstrong called the committee to order on SB 2117. All committee members were present.

Dawn Mock, Medicaid Program Integrity Administrator - Testified in support of bill (see attachment)

Senator Nelson: "On page 3; couple things I saw, why two sets of fingerprints and not one?"

Dawn Mock: "I believe the BCI requires it."

Senator Nelson: "I have another question. On last page about charges, the department can charge up to 30 dollars, law enforcement can charge? What's a reasonable fee? How much does it cost for fingerprinting?"

Dawn Mock: "I'm not sure."

Chairman Armstrong - Has reservations about the price and how often the price will be changed. Chairman Armstrong asks if we will have to change the price every 2 years or 6 years or how often?

"Is there a reason it's 30 dollars? Is the short question."

Jon Alm, Attorney affiliated with Dawn Mock took the question: "The reason 30 dollars is in there because I took it from the early childhood statute. I know that hasn't changed for several legislative sessions."

Jon Alm does not know actual cost of fingerprint.

Senator Nelson: "Could she go over what the amendment does again?"
Referring to Dawn Mock.

Jon Alm: Re-explains the amendment instead of Dawn Mock.

Chairman Armstrong closed the hearing on SB 2117.

Senator Nelson made a motion to adopt the Amendment. Senator Luick seconded.

A Roll Call Vote was taken to adopt the Amendment. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Senator Nelson motioned for Do Pass as Amended. Senator Luick seconded.

A Roll Call Vote was taken for Do Pass as Amended. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Senator Armstrong carried the bill.

17.8070.01001
Title.02000

Adopted by the Judiciary Committee

January 4, 2017

CA / 1/5/17

PROPOSED AMENDMENTS TO SENATE BILL NO. 2117

Page 3, line 5, remove "The department shall provide a copy of any response"

Page 3, remove line 6

Renumber accordingly

Date: 11/4/17
 Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2117

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17, 8070, 01001

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Sen. Nelson Seconded By Sen. Luick

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Osland	X	
Vice-Chair Larson					
Senator Luick					
Senator Myrdal					
Senator Nelson					

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

11/17
2

Date:
Roll Call Vote #:

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2117

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.8070, 01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen. Nelson Seconded By Sen. Luick

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Osland	X	
Vice-Chair Larson					
Senator Luick					
Senator Myrdal					
Senator Nelson					

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Armstrong

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2117: Judiciary Committee (Sen. Armstrong, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2117 was placed on the Sixth order on the calendar.

Page 3, line 5, remove "The department shall provide a copy of any response"

Page 3, remove line 6

Renumber accordingly

2017 HOUSE JUDICIARY

SB 2117

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2117
3/1/2017
28578

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to criminal history record checks for Medicaid services applicants, relating to criminal history record checks for job applicants, department staff, county employees, contractors, and Medicaid services applicants, providers, and staff members; to provide an effective date.

Minutes:

1

Chairman K. Koppelman: Opened the hearing on SB 2117.

Dawn Mock, Medicaid Program Integrity Administrator of DHS: (#1) Went through testimony. (0-5:21)

Representative Klemin: In the courts where we are talking about the providers that are necessarily not human? Are we still requiring some kind of background check on entities?

Dawn Mock: There is always a human behind it. There are people who have ownership in these businesses so anyone with a 5% ownership would be the person that is subject to that fingerprint based background check. It has to be a high risk provider.

Representative Klemin: Some of these providers may have already gone through this with other states? We are not going to have them do it again?

Dawn Mock: No every state Medicaid program has the same requirements.

Representative Nelson: Is a permit to carry sufficient background check?

Dawn Mock: No it is not. To meet the code, it does have to be a fingerprint based background check and it has to go through FBI. When it comes back we get the sheet from them and based on our fitness criteria we determine whether or not they can be a provider or not. We would not be able to rely on any other fingerprint based background check.

Representative Nelson: Your fitness what is that and what would it qualify a person for or disqualify a person for?

Dawn Mock: The department is still working on this. We are going to try to mirror the fitness criteria that Medicare uses for those. I don't have those with me.

Representative Nelson: That Section 12-60-24 that is administrative code?

Dawn Mock: That is what BCI uses.

Rep. Karls: A concealed permit is a BCI background check with the FBI and it is fingerprint based. Why would you make someone resubmit to that?

Dawn Mock: I don't know if we would have access to that information. It would be like any other background check and it would be a need to know and whether we can share those results across departments, I am not aware of. I will certainly research that.

Chairman K. Koppelman: Concealed carry requires five years so you would be within that window.

Representative Nelson: How are you going to determine a criminal history is appropriate?

Dawn Mock: In the 42 CFR the regulation indicates who our high risk providers are. For example, a new home health agency is considered high risk across the board. Other individuals that can get moved up to high risk would be someone that was used to excluded on the list of excluded individuals or entities which are federal exclusions. If we had a doctor Smith who was excluded, but recently reinstated; then they are considered a high risk provider for ten years and within ten years of being removed.

Representative Nelson: You used the word high risk in every place where you described where it is appropriate, but in the law it just says when it is appropriate. Why don't we say when a provider is high risk providers?

Dawn Mock: When appropriate is when we cannot rely on someone else's fingerprint based background check.

Representative Jones: You say this is valid for ten years? Do you mean someone will have to come back in ten years again?

Dawn Mock: Once we revalidate them they are no longer new to us and then they drop out of high risk providers. We have three different categories; limited, moderate and high.

Representative Jones: We have a \$30 recommended cost. Is that wise to put that into a bill like this?

Dawn Mock: That was brought up in the other side as well and we could remove the language.

Representative Jones: Everyone seems to want to get these BCI checks. I am assuming the costs will go up and we should not have a specific amount in there.

Chairman K. Koppelman: I was looking at the suggested amendment; maybe that was for the original bill? Maybe that needs to be revised. What is your reason for this?

Dawn Mock: Replaced the Proposed Amendments to Engrosses Senate Bill 2117 to cover the engrossed bill.

Chairman K. Koppelman: Was there an inquiry about the fiscal note. Need to check that out.

Jonathan Alm, Department of Human Services: We were in contact with BCI and 150 new background checks based on this. The FBI was going to bring 125. We also talked to Kathy Role and they were working on their side and they had some other bills that they were looking at.

Chairman K. Koppelman: Would you check with folks who had the same background check for concealed carrier; if that could just be information you could excess.

Jonathan Alm: The FBI Prohibits us from further disclosing information. The FBI has told us we cannot share cross information?

Representative Jones: If the criteria for concealed weapons is the same information they would need the details wouldn't they? Never mind.

Chairman K. Koppelman: What are the triggers in the background check? What type of criminal history and what type of criminal history would be a disqualifier for providers.

Dawn Mock: Felony's and drug charges would be different things. It depends on the type of service the provider is providing. It is a very new process and we are one of the last states to implement this requirements?

Representative Vetter: Is there a problem with Medicaid fraud?

Dawn Mock: There is Medicare fraud. They bill for services that have never been provided so the opportunity to abuse this system is there. Because we have Medicare providers that are also Medicaid providers I think it could be a problem.

Annette Deidrick, BCI in Criminal History: Their lift won't cost us anything fiscal on this bill. On the marijuana bill we might need some? Based on FBI security they each have a purpose code and we are not able to be FBI title 20 security code to background checks together. If Medicaid is asking for it, they can share it among Medicaid.

Representative Nelson: Can Medicare background check suffice for Medicaid background check?

Dawn Mock: Yes we can rely on a Medicare background check for Medicaid.

Opposition: None

House Judiciary Committee

SB 2117

March 1, 2017

Page 4

Neutral: None

Hearing closed.

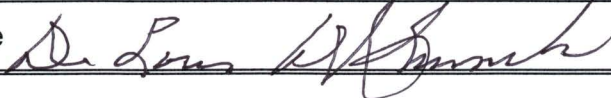
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2117
3/7/2017
28800

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to criminal history record checks for Medicaid services applicants, relating to criminal history record checks for job applicants, department staff, county employees, contractors, and Medicaid services applicants, providers, and staff members; to provide an effective date.

Minutes:

Chairman K. Koppelman: Opened the meeting on SB 2117.

**Motion made to move the amendment Mock amendment by Representative Klemin:
Seconded by Rep. Satrom. (#1)**

Discussion:

Representative Vetter: So we are talking about page 1, line 11.

Voice vote carried.

Representative Jones: I had a note on line 16, page 3 we discussed the fee amount. Maybe we should not have an amount in there.

Representative Roers Jones: My notes say just equivalent amount.

Chairman K. Koppelman: That would be a motion that would be in order.

Motion made a motion to move the amendment to put on line 16, page 3, the actual cost by Rep. Jones; Seconded by Rep. Roers Jones.

Representative Paur: It depends on how they define cost. It may cost us money?

Representative Vetter: Maybe is we say no more than \$30 or the actual cost?

House Judiciary Committee

SB 2117

March 7, 2017

Page 2

Chairman K. Koppelman: Rep. Jones motion is to delete the cost page 3, line 16 \$30 and replace them with the words the actual cost.

Representative Vetter: Discussed the cost or actual?

Representative Klemin: Actual cost is statutory language.

Voice vote carried.

Do Pass Motion Made by Rep. Satrom; Seconded by Rep. Blum

Discussion:

Roll Call Vote 15 Yes 0 No 0 Absent Carrier: Rep. Johnston

Closed.

Proposed Amendments to Engrossed Senate Bill No. 2117

Page 1, line 11, after "department" insert ", in accordance with section 12-60-24."

Page 3, line 4, remove "or to the"

Page 3, line 5, remove "department's authorized agent"

Renumber accordingly

3/7/17 DA

17.8070.02001
Title.03000

Adopted by the Judiciary Committee

March 7, 2017

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2117

Page 1, line 11, overstrike "The" and insert immediately thereafter "In accordance with section 12-60-24, the"

Page 3, line 4, remove "or to the"

Page 3, line 5, remove "department's authorized agent"

Page 3, line 16, replace "thirty dollars" with "the actual cost"

Renumber accordingly

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2117

House Judiciary Committee

Subcommittee

Amendment LC# or Description: Mock amendment

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Klemin Seconded By Rep. Satrom

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

0
Total (Yes) _____ No _____

Absent _____

Floor Assignment Rep. _____

If the vote is on an amendment, briefly indicate intent:

Voice vote carried

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2117**

House **Judiciary** Committee

Subcommittee

Amendment LC# or Description: Line 16, page 3, the actual cost

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Jones Seconded By Rep. Roers Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

0
 Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice vote carried

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2117**

House **Judiciary** Committee

Subcommittee

Amendment LC# or Description: 17.8070.02001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Satrom Seconded By Rep. Blum

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	X		Rep. Hanson	X	
Vice Chairman Karls	X		Rep. Nelson	X	
Rep. Blum	X				
Rep. Johnston	X				
Rep. Jones	X				
Rep. Klemin	X				
Rep. Magrum	X				
Rep. Maragos	X				
Rep. Paur	X				
Rep. Roers-Jones	X				
Rep. Satrom	X				
Rep. Simons	X				
Rep. Vetter	X				

0
Total (Yes) 15 No 0

Absent 0

Floor Assignment Rep. Johnston

If the vote is on an amendment, briefly indicate intent:

Voice vote carried

REPORT OF STANDING COMMITTEE

SB 2117, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2117 was placed on the Sixth order on the calendar.

Page 1, line 11, overstrike "The" and insert immediately thereafter "In accordance with section 12-60-24, the"

Page 3, line 4, remove "or to the"

Page 3, line 5, remove "department's authorized agent"

Page 3, line 16, replace "thirty dollars" with "the actual cost"

Renumber accordingly

2017 TESTIMONY

SB 2117

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.

1/4/17

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.

1/4/17

PROPOSED AMENDMENTS TO SENATE BILL NO. 2117

Page 3, line 5, remove "The department shall provide a copy of any response"

Page 3, remove line 6

Renumber accordingly

#1
2117
3-1-17

Testimony

**Engrossed Senate Bill 2117 –Department of Human Services
House Judiciary Committee
Representative Kim Koppelman, Chairman
March 1, 2017**

Chairman Koppelman, and members of the House Judiciary Committee, I am Dawn Mock, Medicaid Program Integrity Administrator for the Department of Human Services (Department). I appear before you to support Engrossed 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) 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 Publication 1075 and Internal Revenue Code 6103(p)(4). 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 establishes 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 Publication 1075 and Internal Revenue Code 6103(p)(4).

Page 2, lines 10 through 12 of this Bill adds 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 categories 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 5 of this Bill require BCI to request a nationwide background check from the Federal Bureau of Investigation (FBI) and BCI to provide the response to the Department.

Page 3, lines 6 through 10 of this Bill establish that a law enforcement agency shall take the individual's fingerprints.

Page 3, lines 11 through 15 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 16 through 19 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 20 through 26 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 27 and 28 of this Bill declares this Act to be an emergency measure and for it to become effective on July 1, 2017.

Attached to my testimony is a proposed amendment to this Bill which was recommended by the FBI based on their review. The amendment adds "in accordance with section 12-60-24" on page 1, line 11 after Department. It also removes "or to the department's authorized agent" on page 3, lines 4 and 5.

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

Proposed Amendments to Engrossed Senate Bill No. 2117

Page 1, line 11, after "department" insert ", in accordance with section 12-60-24,"

Page 3, line 4, remove "or to the"

Page 3, line 5, remove "department's authorized agent"

Renumber accordingly

Proposed Amendments to Engrossed Senate Bill No. 2117

#1
2117
3-7-17

Page 1, line 11, after "department" insert ", in accordance with section 12-60-24."

Page 3, line 4, remove "or to the"

Page 3, line 5, remove "department's authorized agent"

Renumber accordingly