**Section 270.2250 Health Care Worker Background Check**

a) The facility shall not *knowingly hire any individual in a position with duties involving direct care for residents* if that person *has been convicted of committing or attempting to commit one or more of* the following *offenses* (Section 25(a) of the Health Care Worker Background Check Act [225 ILCS 46/25]):

1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 8-1.1 and 8-1.2));

2) Murder, homicide, manslaughter or concealment of a homicidal death (Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417, and 474));

3) Kidnaping or child abduction (Sections 10-1, 10-2, 10-5 and 10-7 of the Criminal Code of 1961 [720 ILCS 5/10-1, 10-2, 10-5, and 10-7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-1, 10-2, 10-5, and 10-7; Ill. Rev. Stat. 1985, ch. 38, par. 10-6; Ill. Rev. Stat. 1961, ch. 38, pars. 384 to 386));

4) Unlawful restraint or forcible detention (Sections 10-3, 10-3.1, and 10-4 of the Criminal Code of 1961 [720 ILCS 5/10-3, 10-3.1, and 10-4] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-3, 10-3.1, and 10-4; Ill. Rev. Stat. 1961, ch. 38, pars. 252, 252.1, and 252.4));

5) Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Sections 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-6, 11-19.2, and 11-20.1; Ill. Rev. Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104));

6) Assault, battery, heinous battery, tampering with food, drugs or cosmetics, or infliction of great bodily harm (Sections 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7 of the Criminal Code of 1961 [720 ILCS 5/12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 55, 56, and 56a to 60b));

7) Aggravated stalking (Section 12-7.4 of the Criminal Code of 1961 [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-7.4));

8) Home invasion (Section 12-11 of the Criminal Code of 1961 [720 ILCS 5/12-11] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-11));

9) Sexual assault or sexual abuse (Sections 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, 12-14.1, 12-15, and 12-16] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16; Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. 109, 141, 142, 490, and 491));

10) Abuse or gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19));

11) Criminal neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-21));

12) Endangering the life or health of a child (Section 12-21.6 of the Criminal Code of 1961 [720 ILCS 5/12-21.6] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354; Ill. Rev. Stat. 1961, ch. 38, par. 95));

13) Ritual mutilation, ritualized abuse of a child (Sections 12-32 and 12-33 of the Criminal Code of 1961 [720 ILCS 5/12-32 and 12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-32 and 12-33));

14) Theft, retail theft (Sections 16-1 and 16A-3 of the Criminal Code of 1961 [720 ILCS 5/16-1 and 16A-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 16-1 and 16A-3; Ill. Rev. Stat. 1961, ch. 38, pars. 62, 207 to 218, 240 to 244, 246, 253, 254.1, 258, 262, 262a, 273, 290, 291, 301a, 354, 387 to 388b, 389, 393 to 400, 404a to 404c, 438, 492 to 496));

15) Financial exploitation of an elderly or disabled person (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3));

16) Forgery (Section 17-3 of the Criminal Code of 1961 [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3; Ill. Rev. Stat. 1961, ch. 38, pars. 151 and 277 to 286));

17) Robbery, armed robbery (Sections 18-1 and 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-1 and 18-2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2));

18) Vehicular hijacking, aggravated vehicular hijacking, aggravated robbery (Sections 18-3, 18-4, and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-3, 18-4, and 18-5]);

19) Burglary, residential burglary (Sections 19-1 and 19-3 of the Criminal Code of 1961 [720 ILCS 5/19-1 and 19-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3; Ill. Rev. Stat. 1961, ch. 38, pars. 84 to 86, 88, and 501));

20) Criminal trespass to a residence (Section 19-4 of the Criminal Code of 1961 [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 19-4));

21) Arson (Sections 20-1 and 20-1.1 of the Criminal Code of 1961 [720 ILCS 5/20-1 and 20-1.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 20-1 and 20-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 48 to 53 and 236 to 238));

22) Unlawful use of weapons, aggravated discharge of a firearm, or reckless discharge of a firearm (Sections 24-1, 24-1.2, and 24-1.5 of the Criminal Code of 1961 [720 ILCS 5/24-1, 24-1.2, and 24-1.5] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1 and 24-1.2; Ill. Rev. Stat. 1961, ch. 38, pars. 152, 152a, 155, 155a to 158b, 414a to 414c, 414e, and 414g));

23) Armed violence – elements of the offense (Section 33A-2 of the Criminal Code of 1961 [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 33A-2));

24) Those provided in Section 4 of the Wrongs to Children Act (Section 4 of the Wrongs to Children Act [720 ILCS 150/4] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354));

25) Cruelty to children (Section 53 of the Criminal Jurisprudence Act [720 ILCS 115/53] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2368));

26) Manufacture, delivery or trafficking of cannabis, delivery of cannabis on school grounds, or delivery to person under 18; violation by person under 18 (Sections 5, 5.1, 5.2, 7, and 9 of the Cannabis Control Act [720 ILCS 550/5, 5.1, 5.2, 7, and 9] (formerly Ill. Rev. Stat. 1991, ch. 56½, pars. 705, 705.1, 705.2, 707, and 709)); or

27) Manufacture, delivery or trafficking of controlled substances (Sections 401, 401.1, 404, 405, 405.1, 407 and 407.1 of the Illinois Controlled Substance Act [720 ILCS 570/401, 401.1, 404, 405, 405.1, 407, 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56½, pars. 1401, 1401.1, 1404, 1405, 1405.1, 1407, and 1407.1)).

b) The facility shall not *knowingly employ or retain any individual in a position with duties involving direct care for residents* if that person *has been convicted of committing or attempting to commit one or more of the offenses* listed in subsections (a)(1) to (27) of this Section *unless the applicant, employee* or employer *obtains a waiver pursuant to* subsections (m) and (o) of this Section. (Section 25(a) of the Health Care Worker Background Check Act)

c) *A* facility *shall not hire, employ, or retain any individual in a position with duties involving direct care of residents if the* facility *becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as an offense listed in* subsections (a)(1) to (27) of this Section, *as verified by court records, records from a State agency, or an FBI criminal history record check. This shall not be construed to mean that a* facility *has an obligation to conduct a criminal history records check in other states in which an employee has resided.* (Section 25(b) of the Act)

d) For the purpose of this Section:

1) *"Applicant" means an individual seeking employment with a* facility *who has received a bona fide conditional offer of employment.*

2) *"Conditional offer of employment" means a bona fide offer of employment by a* facility *to an applicant, which is contingent upon the receipt of a report from the Department of State Police indicating that the applicant does not have a record of conviction of any of the criminal offenses* listed in subsections (a)(1) to (27) of this Section.

3) *"Direct care" means the provision of nursing care or assistance with feeding, dressing, movement, bathing, or other personal needs.*

4) *"Initiate" means the obtaining of the authorization for a record check from a student, applicant, or employee.* (Section 15 of the Health Care Worker Background Check Act)

e) For purposes of the Health Care Worker Background Check Act, the facility shall establish a policy defining which employees provide direct care. In making this determination the facility shall consider the following:

1) The employee's assigned job responsibilities as set forth in the employee's job description;

2) Whether the employee is required to or has the opportunity to be alone with residents, with the exception of infrequent or unusual occasions; and

3) Whether the employee's regular responsibilities include physical contact with residents, for example to provide therapy or to draw blood.

f) When the facility *makes a conditional offer of employment to an applicant* who is not exempt under subsection (s) of this Section, *for a position with duties that involve direct care for residents,* the employer shall inquire of the Nurse Aide Registry as to the status of the applicant's Uniform Conviction Information Act (UCIA) criminal history record check. If a UCIA criminal history record check has not been conducted within the last 12 months, the facility *must initiate or have initiated on* its *behalf a UCIA criminal history record check for that applicant.* (Section 30(c) of the Health Care Worker Background Check Act)

g) The facility *shall transmit all necessary information and fees to the Illinois State Police within 10 working days after receipt of the authorization.* (Section 15 of the Health Care Worker Background Check Act)

h) The facility may accept an authentic UCIA criminal history record check that has been conducted within the last 12 months rather than initiating a check as required in subsection (f) of this Section.

i) *The request for a UCIA* *criminal history record check shall be* made as *prescribed by the Department of State Police. The applicant or employee must be notified of the following whenever* a non-fingerprint-based UCIA criminal history record *check is made:*

1) *That the* facility *shall request or have requested on its behalf* a non-fingerprint-based *UCIA criminal history record check pursuant to* the Health Care Worker Background Check *Act.*

2) *That the applicant or employee has a right to obtain a copy of the criminal records report from the* facility, *challenge the accuracy and completeness of the report, and request a waiver* in accordance with subsection (m) of this Section.

3) *That the applicant, if hired conditionally, may be terminated if the* non-fingerprint-based *criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in* subsections (a)(1) to (27) of this Section *unless the applicant's identity is validated and it is determined that the applicant* or employee *does not have a disqualifying criminal history record based on a fingerprint-based records check pursuant to* subsection (k) of this Section.

4) *That the applicant, if not hired conditionally, shall not be hired if the* non-fingerprint-based *criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in* subsections (a)(1) to (27) of this Section *unless the applicant's record is cleared based on a fingerprint-based records check pursuant to* subsection (k) of this Section.

5) *That the employee may be terminated if the criminal records report indicates that the employee has a record of conviction of any of the criminal offenses enumerated in* subsections (a)(1) to (27) of this Section *unless the employee's record is cleared based on a fingerprint-based records check pursuant to* subsection (k) of this Section. (Section 30(e) and (f) of the Health Care Worker Background Check Act)

j) A facility *may conditionally employ an applicant to provide direct care for up to three months pending the results of a UCIA criminal history record check*. (Section 30(g) of the Health Care Worker Background Check Act)

k) *An applicant or employee whose* non-fingerprint-based *UCIA* *criminal history record check indicates a conviction for committing or attempting to commit one or more of the offenses* listed in subsections (a)(1) to (27) of this Section *may request that the* facility *or its designee commence a fingerprint-based UCIA criminal records check by submitting any necessary fees and information in a form and manner prescribed by the Department of State Police.* (Section 35 of the Health Care Worker Background Check Act)

l) *A* facility *having actual knowledge from a source other than a non-fingerprint check that an employee has been convicted of committing or attempting to commit one of the offenses enumerated in Section 25 of the Act must initiate a fingerprint-based background check within 10 working days* after *acquiring that knowledge. The* facility *may continue to employ that individual in a direct care position, may reassign that individual to a non-direct care position, or may suspend the individual until the results of the fingerprint-based background check are received.* (Section 30(d) of the Health Care Worker Background Check Act)

m) *An applicant, employee* or employer *may request a waiver* to subsection (a), (b) or (c) of this Section *by submitting the following to* the Department *within five working days after the receipt of the criminal records report:*

1) A completed *fingerprint-based UCIA criminal records check* form (Section 40(a) of the Health Care Worker Background Check Act) (which the Department will forward to the Department of State Police); and

2) A certified check, money order or facility check made payable to the Department of State Police for the amount of money necessary to initiate a fingerprint-based UCIA criminal records check.

n) *The Department may accept the results of the fingerprint-based UCIA criminal records check instead of the items required by* subsections (m)(1) and (2) above. (Section 40(a-5) of the Health Care Worker Background Check Act)

o) The Department *may grant a waiver based on mitigating circumstances, which may include:*

1) *The age of the individual at which the crime was committed;*

2) *The circumstances surrounding the crime;*

3) *The length of time since the conviction;*

4) *The applicant's or employee's criminal history since the conviction;*

5) *The applicant's or employee's work history;*

6) *The applicant's or employee's current employment references;*

7) *The applicant's or employee's character references;*

8) *Nurse Aide Registry records; and*

9) *Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents.* (Section 40(b) of the Health Care Worker Background Check Act)

p) *An individual shall not be employed in a direct care position from the time that the employer receives the results of a non-fingerprint check containing disqualifying conditions until the time that the individual receives a waiver from the Department. If the individual challenges the results of the non-fingerprint check, the employer may continue to employ the individual in a direct care position if the individual presents convincing evidence to the employer that the non-fingerprint check is invalid. If the individual challenges the results of the non-fingerprint check, his or her identity shall be validated by a fingerprint-based records check in accordance with* subsection (k) of this Section. (Section 40(d) of the Health Care Worker Background Check Act)

q) *A* facility *is not obligated to employ or offer permanent employment to an applicant, or to retain an employee who is granted a waiver.* (Section 40(f) of the Health Care Worker Background Check Act)

r) A facility may retain the individual in a direct care position if the individual presents clear and convincing evidence to the facility that the non-fingerprint-based criminal records report is invalid and if there is a good faith belief on the part of the employer that the individual did not commit an offense listed in subsections (a)(1) to (27) of this Section, pending positive verification through a fingerprint-based criminal records check. Such evidence may include, but not be limited to:

1) certified court records;

2) written verification from the State's Attorney's office that prosecuted the conviction at issue;

3) written verification of employment during the time period during which the crime was committed or during the incarceration period stated in the report;

4) a signed affidavit from the individual concerning the validity of the report; or

5) documentation from a local law enforcement agency that the individual was not convicted of a disqualifying crime.

s) This Section *shall not apply to:*

1) *An individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another law of this State;*

2) *An individual employed or retained by a health care employer for whom a criminal background check is required by another law of this State; or*

3) *A student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a respiratory care student unless he or she is employed by a health care employer in a position with duties involving direct care for residents.* (Section 20 of the Health Care Worker Background Check Act)

t) *The* facility *must send a copy of the results of the UCIA* criminal history *record check to the State Nurse Aide Registry* for those individuals who are on the Registry. (Section 30(b) of the Health Care Worker Background Check Act) The facility shall include the individual's Social Security number on the criminal history record check results.

u) *The* facility *shall retain on file for a period of 5 years records of criminal records requests for all employees. The* facility *shall retain the results of the UCIA* *criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files shall be subject to inspection by the* Department. *A fine of $500* shall *be imposed for failure to maintain these records.* (Section 50 of the Health Care Worker Background Check Act)

v) The facility shall maintain a copy of the employee's criminal history record check results and waiver, if applicable, in the personnel file or other secure location accessible to the Department.

(Source: Added at 24 Ill. Reg. 14055, effective August 31, 2000)