



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB2531

Introduced 2/18/2005, by Rep. Kevin Joyce

SYNOPSIS AS INTRODUCED:

225 ILCS 46/5
225 ILCS 46/10
225 ILCS 46/15
225 ILCS 46/25
225 ILCS 46/30
225 ILCS 46/40

Amends the Health Care Worker Background Check Act to include all employees of licensed and certified long-term care facilities who have or may have contact with residents or have access to the living quarters or the financial, medical, or personal records of residents. Provides that beginning January 1, 2006, each long-term care facility operating in the State must initiate, or have initiated on its behalf, a UCIA criminal history record check for all employees with duties that involve or may involve contact with residents or access to the living quarters or the financial, medical, or personal records of residents. Provides that a health care employer may conditionally employ an applicant for up to 3 months pending the results of a UCIA criminal history record check (now, a health care employer may conditionally employ the applicant to provide direct care for up to 3 months pending the results of the check). Provides that an individual shall not be employed from the time that an employer receives the results of a non-fingerprint check containing disqualifying conditions until the time that the individual receives a waiver from the Department (now, an individual shall not be employed in a direct care position from that time until he or she receives the waiver). Provides that if the individual challenges the results of the non-fingerprint check, the employer may continue to employ the individual if the individual presents convincing evidence to the employer that the non-fingerprint check is invalid (now, the employer may continue to employ the individual in a direct care position if the individual presents convincing evidence that the non-fingerprint check is invalid).

LRB094 09883 RAS 40141 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Health Care Worker Background Check Act is
5 amended by changing Sections 5, 10, 15, 25, 30, and 40 as
6 follows:

7 (225 ILCS 46/5)

8 Sec. 5. Purpose. The General Assembly finds that it is in
9 the public interest to protect the most frail and disabled
10 citizens of the State of Illinois from possible harm through a
11 criminal background check of certain health care workers and
12 all employees of licensed and certified long-term care
13 facilities who have or may have contact with residents or have
14 access to the living quarters or the financial, medical, or
15 personal records of residents.

16 (Source: P.A. 89-197, eff. 7-21-95.)

17 (225 ILCS 46/10)

18 Sec. 10. Applicability. This Act applies to all individuals
19 employed or retained by a health care employer as home health
20 care aides, nurse aides, personal care assistants, private duty
21 nurse aides, day training personnel, or an individual working
22 in any similar health-related occupation where he or she
23 provides direct care or has access to long-term care residents
24 or the living quarters or financial, medical, or personal
25 records of long-term care residents. This Act also applies to
26 all employees of licensed or certified long-term care
27 facilities who have or may have contact with residents or
28 access to the living quarters or the financial, medical, or
29 personal records of residents.

30 (Source: P.A. 89-197, eff. 7-21-95; 89-674, eff. 8-14-96.)

1 (225 ILCS 46/15)

2 Sec. 15. Definitions. For the purposes of this Act, the
3 following definitions apply:

4 "Applicant" means an individual seeking employment with a
5 health care employer who has received a bona fide conditional
6 offer of employment.

7 "Conditional offer of employment" means a bona fide offer
8 of employment by a health care employer to an applicant, which
9 is contingent upon the receipt of a report from the Department
10 of State Police indicating that the applicant does not have a
11 record of conviction of any of the criminal offenses enumerated
12 in Section 25.

13 "Direct care" means the provision of nursing care or
14 assistance with feeding, dressing, movement, bathing,
15 toileting, or other personal needs. The entity responsible for
16 inspecting and licensing, certifying, or registering the
17 health care employer may, by administrative rule, prescribe
18 guidelines for interpreting this definition with regard to the
19 health care employers that it licenses.

20 "Health care employer" means:

21 (1) the owner or licensee of any of the following:

22 (i) a community living facility, as defined in the
23 Community Living Facilities Act;

24 (ii) a life care facility, as defined in the Life
25 Care Facilities Act;

26 (iii) a long-term care facility, as defined in the
27 Nursing Home Care Act;

28 (iv) a home health agency, as defined in the Home
29 Health Agency Licensing Act;

30 (v) a full hospice, as defined in the Hospice
31 Program Licensing Act;

32 (vi) a hospital, as defined in the Hospital
33 Licensing Act;

34 (vii) a community residential alternative, as
35 defined in the Community Residential Alternatives
36 Licensing Act;

1 (viii) a nurse agency, as defined in the Nurse
2 Agency Licensing Act;

3 (ix) a respite care provider, as defined in the
4 Respite Program Act;

5 (ix-a) an establishment licensed under the
6 Assisted Living and Shared Housing Act;

7 (x) a supportive living program, as defined in the
8 Illinois Public Aid Code;

9 (xi) early childhood intervention programs as
10 described in 59 Ill. Adm. Code 121;

11 (xii) the University of Illinois Hospital,
12 Chicago;

13 (xiii) programs funded by the Department on Aging
14 through the Community Care Program;

15 (xiv) programs certified to participate in the
16 Supportive Living Program authorized pursuant to
17 Section 5-5.01a of the Illinois Public Aid Code;

18 (xv) programs listed by the Emergency Medical
19 Services (EMS) Systems Act as Freestanding Emergency
20 Centers;

21 (xvi) locations licensed under the Alternative
22 Health Care Delivery Act;

23 (2) a day training program certified by the Department
24 of Human Services;

25 (3) a community integrated living arrangement operated
26 by a community mental health and developmental service
27 agency, as defined in the Community-Integrated Living
28 Arrangements Licensing and Certification Act; or

29 (4) the State Long Term Care Ombudsman Program,
30 including any regional long term care ombudsman programs
31 under Section 4.04 of the Illinois Act on the Aging, only
32 for the purpose of securing background checks.

33 "Initiate" means the obtaining of the authorization for a
34 record check from a student, applicant, or employee. The
35 educational entity or health care employer or its designee
36 shall transmit all necessary information and fees to the

1 Illinois State Police within 10 working days after receipt of
2 the authorization.

3 "Long-term care facility" means a facility licensed by the
4 State or certified under federal law as a long-term care
5 facility.

6 (Source: P.A. 92-16, eff. 6-28-01; 93-878, eff. 1-1-05.)

7 (225 ILCS 46/25)

8 Sec. 25. Persons ineligible to be hired by health care
9 employers and long-term care facilities.

10 (a) After January 1, 1996, or January 1, 1997, as
11 applicable, no health care employer shall knowingly hire,
12 employ, or retain any individual in a position with duties
13 involving direct care for clients, patients, or residents, and
14 no long-term care facility shall knowingly hire, employ, or
15 retain any individual in a position with duties that involve or
16 may involve contact with residents or access to the living
17 quarters or the financial, medical, or personal records of
18 residents, who has been convicted of committing or attempting
19 to commit one or more of the offenses defined in Sections
20 8-1.1, 8-1.2, 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, 9-3.3,
21 10-1, 10-2, 10-3, 10-3.1, 10-4, 10-5, 10-7, 11-6, 11-9.1,
22 11-19.2, 11-20.1, 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4,
23 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, 12-4.7,
24 12-7.4, 12-11, 12-13, 12-14, 12-14.1, 12-15, 12-16, 12-19,
25 12-21, 12-21.6, 12-32, 12-33, 16-1, 16-1.3, 16A-3, 17-3, 18-1,
26 18-2, 18-3, 18-4, 18-5, 19-1, 19-3, 19-4, 20-1, 20-1.1, 24-1,
27 24-1.2, 24-1.5, or 33A-2 of the Criminal Code of 1961; those
28 provided in Section 4 of the Wrongs to Children Act; those
29 provided in Section 53 of the Criminal Jurisprudence Act; those
30 defined in Section 5, 5.1, 5.2, 7, or 9 of the Cannabis Control
31 Act; or those defined in Sections 401, 401.1, 404, 405, 405.1,
32 407, or 407.1 of the Illinois Controlled Substances Act, unless
33 the applicant or employee obtains a waiver pursuant to Section
34 40.

35 (a-1) After January 1, 2004, no health care employer shall

1 knowingly hire any individual in a position with duties
2 involving direct care for clients, patients, or residents, and
3 no long-term care facility shall knowingly hire any individual
4 in a position with duties that involve or may involve contact
5 with residents or access to the living quarters or the
6 financial, medical, or personal records of residents, who has
7 (i) been convicted of committing or attempting to commit one or
8 more of the offenses defined in Section 12-3.3, 12-4.2-5, 16-2,
9 16G-15, 16G-20, 18-5, 20-1.2, 24-1.1, 24-1.2-5, 24-1.6,
10 24-3.2, or 24-3.3 of the Criminal Code of 1961; Section 4, 5,
11 6, 8, or 17.02 of the Illinois Credit Card and Debit Card Act;
12 or Section 5.1 of the Wrongs to Children Act; or (ii) violated
13 Section 10-5 of the Nursing and Advanced Practice Nursing Act.

14 A UCIA criminal history record check need not be redone for
15 health care employees who have been continuously employed by a
16 health care employer since January 1, 2004, but nothing in this
17 Section prohibits a health care employer from initiating a
18 criminal history check for these employees.

19 A health care employer is not required to retain an
20 individual in a position with duties involving direct care for
21 clients, patients, or residents, and no long-term care facility
22 is required to retain an individual in a position with duties
23 that involve or may involve contact with residents or access to
24 the living quarters or the financial, medical, or personal
25 records of residents, who has been convicted of committing or
26 attempting to commit one or more of the offenses enumerated in
27 this subsection.

28 (b) A health care employer shall not hire, employ, or
29 retain any individual in a position with duties involving
30 direct care of clients, patients, or residents, and no
31 long-term care facility shall knowingly hire, employ, or retain
32 any individual in a position with duties that involve or may
33 involve contact with residents or access to the living quarters
34 or the financial, medical, or personal records of residents, if
35 the health care employer becomes aware that the individual has
36 been convicted in another state of committing or attempting to

1 commit an offense that has the same or similar elements as an
2 offense listed in subsection (a) or (a-1), as verified by court
3 records, records from a state agency, or an FBI criminal
4 history record check. This shall not be construed to mean that
5 a health care employer has an obligation to conduct a criminal
6 history records check in other states in which an employee has
7 resided.

8 (Source: P.A. 93-224, eff. 7-18-03.)

9 (225 ILCS 46/30)

10 Sec. 30. Non-fingerprint based UCIA criminal records
11 check.

12 (a) Beginning on January 1, 1997, an educational entity,
13 other than a secondary school, conducting a nurse aide training
14 program must initiate a UCIA criminal history records check
15 prior to entry of an individual into the training program. A
16 nurse aide seeking to be included on the nurse aide registry
17 shall authorize the Department of Public Health or its designee
18 that tests nurse aides or the health care employer or its
19 designee to request a criminal history record check pursuant to
20 the Uniform Conviction Information Act (UCIA) for each nurse
21 aide applying for inclusion on the State nurse aide registry.
22 Any nurse aide not submitting the required authorization and
23 information for the record check will not be added to the State
24 nurse aide registry. A nurse aide will not be entered on the
25 State nurse aide registry if the report from the Department of
26 State Police indicates that the nurse aide has a record of
27 conviction of any of the criminal offenses enumerated in
28 Section 25 unless the nurse aide's identity is validated and it
29 is determined that the nurse aide does not have a disqualifying
30 criminal history record based upon a fingerprint-based records
31 check pursuant to Section 35 or the nurse aide receives a
32 waiver pursuant to Section 40.

33 (b) The Department of Public Health shall notify each
34 health care employer inquiring as to the information on the
35 State nurse aide registry of the date of the nurse aide's last

1 UCIA criminal history record check. If it has been more than
2 one year since the records check, the health care employer must
3 initiate or have initiated on his or her behalf a UCIA criminal
4 history record check for the nurse aide pursuant to this
5 Section. The health care employer must send a copy of the
6 results of the record check to the State nurse aide registry
7 for an individual employed as a nurse aide.

8 (c) Beginning January 1, 1996, a health care employer who
9 makes a conditional offer of employment to an applicant other
10 than a nurse aide for position with duties that involve direct
11 care for clients, patients, or residents must initiate or have
12 initiated on his or her behalf a UCIA criminal history record
13 check for that applicant.

14 (d) No later than January 1, 1997, a health care employer
15 must initiate or have initiated on his or her behalf a UCIA
16 criminal history record check for all employees other than
17 those enumerated in subsections (a), (b), and (c) of this
18 Section with duties that involve direct care for clients,
19 patients, or residents. A health care employer having actual
20 knowledge from a source other than a non-fingerprint check that
21 an employee has been convicted of committing or attempting to
22 commit one of the offenses enumerated in Section 25 of this Act
23 must initiate a fingerprint-based background check within 10
24 working days of acquiring that knowledge. The employer may
25 continue to employ that individual in a direct care position,
26 may reassign that individual to a non-direct care position, or
27 may suspend the individual until the results of the
28 fingerprint-based background check are received.

29 (d-5) Beginning January 1, 2006, each long-term care
30 facility operating in the State must initiate, or have
31 initiated on its behalf, a UCIA criminal history record check
32 for all employees with duties that involve or may involve
33 contact with residents or access to the living quarters or the
34 financial, medical, or personal records of residents.

35 (e) The request for a UCIA criminal history record check
36 must be in the form prescribed by the Department of State

1 Police.

2 (f) The applicant or employee must be notified of the
3 following whenever a non-fingerprint check is made:

4 (i) that the health care employer shall request or have
5 requested on his or her behalf a UCIA criminal history
6 record check pursuant to this Act;

7 (ii) that the applicant or employee has a right to
8 obtain a copy of the criminal records report from the
9 health care employer, challenge the accuracy and
10 completeness of the report, and request a waiver under
11 Section 40 of this Act;

12 (iii) that the applicant, if hired conditionally, may
13 be terminated if the criminal records report indicates that
14 the applicant has a record of conviction of any of the
15 criminal offenses enumerated in Section 25 unless the
16 applicant's identity is validated and it is determined that
17 the applicant does not have a disqualifying criminal
18 history record based on a fingerprint-based records check
19 pursuant to Section 35.

20 (iv) that the applicant, if not hired conditionally,
21 shall not be hired if the criminal records report indicates
22 that the applicant has a record of conviction of any of the
23 criminal offenses enumerated in Section 25 unless the
24 applicant's record is cleared based on a fingerprint-based
25 records check pursuant to Section 35.

26 (v) that the employee may be terminated if the criminal
27 records report indicates that the employee has a record of
28 conviction of any of the criminal offenses enumerated in
29 Section 25 unless the employee's record is cleared based on
30 a fingerprint-based records check pursuant to Section 35.

31 (g) A health care employer may conditionally employ an
32 applicant ~~to provide direct care~~ for up to 3 months pending the
33 results of a UCIA criminal history record check.

34 (Source: P.A. 91-598, eff. 1-1-00.)

35 (225 ILCS 46/40)

1 Sec. 40. Waiver.

2 (a) An applicant, employee, or nurse aide may request a
3 waiver of the prohibition against employment by submitting the
4 following information to the entity responsible for
5 inspecting, licensing, certifying, or registering the health
6 care employer within 5 working days after the receipt of the
7 criminal records report:

8 (1) Information necessary to initiate a
9 fingerprint-based UCIA criminal records check in a form and
10 manner prescribed by the Department of State Police; and

11 (2) The fee for a fingerprint-based UCIA criminal
12 records check, which shall not exceed the actual cost of
13 the record check.

14 (a-5) The entity responsible for inspecting, licensing,
15 certifying, or registering the health care employer may accept
16 the results of the fingerprint-based UCIA criminal records
17 check instead of the items required by paragraphs (1) and (2)
18 of subsection (a).

19 (b) The entity responsible for inspecting, licensing,
20 certifying, or registering the health care employer may grant a
21 waiver based upon any mitigating circumstances, which may
22 include, but need not be limited to:

23 (1) The age of the individual at which the crime was
24 committed;

25 (2) The circumstances surrounding the crime;

26 (3) The length of time since the conviction;

27 (4) The applicant or employee's criminal history since
28 the conviction;

29 (5) The applicant or employee's work history;

30 (6) The applicant or employee's current employment
31 references;

32 (7) The applicant or employee's character references;

33 (8) Nurse aide registry records; and

34 (9) Other evidence demonstrating the ability of the
35 applicant or employee to perform the employment
36 responsibilities competently and evidence that the

1 applicant or employee does not pose a threat to the health
2 or safety of residents, patients, or clients.

3 (c) The entity responsible for inspecting, licensing,
4 certifying, or registering a health care employer must inform
5 the health care employer if a waiver is being sought and must
6 act upon the waiver request within 30 days of receipt of all
7 necessary information, as defined by rule.

8 (d) An individual shall not be employed ~~in a direct care~~
9 ~~position~~ from the time that the employer receives the results
10 of a non-fingerprint check containing disqualifying conditions
11 until the time that the individual receives a waiver from the
12 Department. If the individual challenges the results of the
13 non-fingerprint check, the employer may continue to employ the
14 individual ~~in a direct care position~~ if the individual presents
15 convincing evidence to the employer that the non-fingerprint
16 check is invalid. If the individual challenges the results of
17 the non-fingerprint check, his or her identity shall be
18 validated by a fingerprint-based records check in accordance
19 with Section 35.

20 (e) The entity responsible for inspecting, licensing,
21 certifying, or registering the health care employer shall be
22 immune from liability for any waivers granted under this
23 Section.

24 (f) A health care employer is not obligated to employ or
25 offer permanent employment to an applicant, or to retain an
26 employee who is granted a waiver under this Section.

27 (Source: P.A. 91-598, eff. 1-1-00.)