

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, a supportive living facility, an assisted living  
6 establishment, or a shared housing establishment or registered  
7 as a board and care home.

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

9 (225 ILCS 46/25)

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

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

1 40.

2 (a-1) After January 1, 2004, no health care employer shall  
3 knowingly hire any individual in a position with duties  
4 involving direct care for clients, patients, or residents, and  
5 no long-term care facility shall knowingly hire any individual  
6 in a position with duties that involve or may involve contact  
7 with residents or access to the living quarters or the  
8 financial, medical, or personal records of residents, who has  
9 (i) been convicted of committing or attempting to commit one or  
10 more of the offenses defined in Section 12-3.3, 12-4.2-5, 16-2,  
11 16G-15, 16G-20, 18-5, 20-1.2, 24-1.1, 24-1.2-5, 24-1.6,  
12 24-3.2, or 24-3.3 of the Criminal Code of 1961; Section 4, 5,  
13 6, 8, or 17.02 of the Illinois Credit Card and Debit Card Act;  
14 or Section 5.1 of the Wrongs to Children Act; or (ii) violated  
15 Section 10-5 of the Nursing and Advanced Practice Nursing Act.

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

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

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

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

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

11 (225 ILCS 46/30)

12 Sec. 30. Non-fingerprint based UCIA criminal records  
13 check.

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

35 (b) The Department of Public Health shall notify each

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

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

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

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

1 (e) The request for a UCIA criminal history record check  
2 must be in the form prescribed by the Department of State  
3 Police.

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

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

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

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

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

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

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

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



1 (225 ILCS 46/40)

2 Sec. 40. Waiver.

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

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

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

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

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

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

26 (2) The circumstances surrounding the crime;

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

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

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

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

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

34 (8) Nurse aide registry records; and

35 (9) Other evidence demonstrating the ability of the

1 applicant or employee to perform the employment  
2 responsibilities competently and evidence that the  
3 applicant or employee does not pose a threat to the health  
4 or safety of residents, patients, or clients.

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

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

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

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

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