

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 and by
6 adding Section 70 as 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 criminal history record check for
34 all employees hired on or after January 1, 2006 with duties
35 that involve or may involve contact with residents or access to
36 the living quarters or the financial, medical, or personal

1 records of residents.

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

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

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

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

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

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

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

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

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

2 (225 ILCS 46/40)

3 Sec. 40. Waiver.

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

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

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

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

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

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

27 (2) The circumstances surrounding the crime;

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

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

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

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

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

35 (8) Nurse aide registry records; and

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

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

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

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

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

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

31 (225 ILCS 46/70 new)

32 Sec. 70. Centers for Medicare and Medicaid Services (CMMS)
33 grant.

34 (a) In this Section:

35 "Centers for Medicare and Medicaid Services (CMMS) grant"

1 means the grant awarded to and distributed by the Department of
2 Public Health to enhance the conduct of criminal history
3 records checks of certain health care employees. The CMMS grant
4 is authorized by Section 307 of the federal Medicare
5 Prescription Drug, Improvement, and Modernization Act of 2003,
6 which establishes the framework for a program to evaluate
7 national and state background checks on prospective employees
8 with direct access to patients of long-term care facilities or
9 providers.

10 "Selected health care employer" means any of the following
11 selected to participate in the CMMS grant:

12 (1) a community living facility as defined in the
13 Community Living Facility Act;

14 (2) a long-term care facility as defined in the Nursing
15 Home Care Act;

16 (3) a home health agency as defined in the Home Health
17 Agency Licensing Act;

18 (4) a full hospice as defined in the Hospice Licensing
19 Act;

20 (5) an establishment licensed under the Assisted
21 Living and Shared Housing Act;

22 (6) a supportive living facility as defined in the
23 Illinois Public Aid Code;

24 (7) a day training program certified by the Department
25 of Human Services; or

26 (8) a community integrated living arrangement operated
27 by a community mental health and developmental service
28 agency as defined in the Community Integrated Living
29 Arrangements Licensing and Certification Act.

30 (b) Selected health care employers shall be phased in to
31 participate in the CMMS grant between January 1, 2006 and
32 January 1, 2007, as prescribed by the Department of Public
33 Health by rule.

34 (c) With regards to individuals hired on or after January
35 1, 2006 who have direct access to residents, patients, or
36 clients of the selected health care employer, selected health

1 care employers must comply with Section 25 of this Act.

2 "Individuals who have direct access" includes, but is not
3 limited to, (i) direct care workers as described in subsection
4 (a) of Section 25; (ii) individuals licensed by the Department
5 of Financial and Professional Regulation, such as nurses,
6 social workers, physical therapists, occupational therapists,
7 and pharmacists; (iii) individuals who provide services on
8 site, through contract; and (iv) non-direct care workers, such
9 as those who work in environmental services, food service, and
10 administration.

11 "Individuals who have direct access" does not include
12 physicians or volunteers.

13 The Department of Public Health may further define
14 "individuals who have direct access" by rule.

15 (d) Each applicant seeking employment in a position
16 described in subsection (c) of this Section with a selected
17 health care employer shall, as a condition of employment, have
18 his or her fingerprints submitted to the Department of State
19 Police in an electronic format that complies with the form and
20 manner for requesting and furnishing criminal history record
21 information by the Department of State Police and the Federal
22 Bureau of Investigation criminal history record databases now
23 and hereafter filed. The Department of State Police shall
24 forward the fingerprints to the Federal Bureau of Investigation
25 for a national criminal history records check. The Department
26 of State Police shall charge a fee for conducting the criminal
27 history records check, which shall not exceed the actual cost
28 of the records check and shall be deposited into the State
29 Police Services Fund. The Department of State Police shall
30 furnish, pursuant to positive identification, records of
31 Illinois convictions to the Department of Public Health.

32 (e) A selected health care employer who makes a conditional
33 offer of employment to an applicant shall:

34 (1) ensure that the applicant has complied with the
35 fingerprinting requirements of this Section;

36 (2) complete documentation relating to any criminal

1 history record, as revealed by the applicant, as prescribed
2 by rule by the Department of Public Health;

3 (3) complete documentation of the applicant's personal
4 identifiers as prescribed by rule by the Department of
5 Public Health; and

6 (4) provide supervision, as prescribed by rule by the
7 licensing agency, if the applicant is hired and allowed to
8 work prior to the results of the criminal history records
9 check being obtained.

10 (f) A selected health care employer having actual knowledge
11 from a source that an individual with direct access to a
12 resident, patient, or client has been convicted of committing
13 or attempting to commit one of the offenses enumerated in
14 Section 25 of this Act shall contact the licensing agency or
15 follow other instructions as prescribed by administrative
16 rule.

17 (g) A fingerprint-based criminal history records check
18 submitted in accordance with subsection (d) of this Section
19 must be submitted as a fee applicant inquiry in the form and
20 manner prescribed by the Department of State Police.

21 (h) This Section shall be inapplicable upon the conclusion
22 of the CMMS grant.