

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 15, 20, 25, 40, 45, 50, 55, and 60
6 and by adding Section 33 as follows:

7 (225 ILCS 46/15)

8 Sec. 15. Definitions. ~~In For the purposes of this Act, the~~
9 ~~following definitions apply:~~

10 "Applicant" means an individual seeking employment with a
11 health care employer who has received a bona fide conditional
12 offer of employment.

13 "Conditional offer of employment" means a bona fide offer
14 of employment by a health care employer to an applicant, which
15 is contingent upon the receipt of a report from the Department
16 of Public Health ~~State Police~~ indicating that the applicant
17 does not have a record of conviction of any of the criminal
18 offenses enumerated in Section 25.

19 "Direct care" means the provision of nursing care or
20 assistance with feeding, dressing, movement, bathing,
21 toileting, or other personal needs, including home services as
22 defined in the Home Health, Home Services, and Home Nursing
23 Agency Licensing Act. The entity responsible for inspecting and

1 licensing, certifying, or registering the health care employer
2 may, by administrative rule, prescribe guidelines for
3 interpreting this definition with regard to the health care
4 employers that it licenses.

5 "Disqualifying offenses" means those offenses set forth in
6 Section 25 of this Act.

7 "Employee" means any individual hired, employed, or
8 retained to which this Act applies.

9 "Fingerprint-based criminal history records check" means a
10 livescan fingerprint-based criminal history records check
11 submitted as a fee applicant inquiry in the form and manner
12 prescribed by the Department of State Police.

13 "Health care employer" means:

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

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

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

19 (iii) a long-term care facility, ~~as defined in the~~
20 ~~Nursing Home Care Act;~~

21 (iv) a home health agency, home services agency, or
22 home nursing agency as defined in the Home Health, Home
23 Services, and Home Nursing Agency Licensing Act;

24 (v) a ~~comprehensive~~ hospice care program or
25 volunteer hospice program, as defined in the Hospice
26 Program Licensing Act;

1 (vi) a hospital, as defined in the Hospital
2 Licensing Act;

3 (vii) (blank); a ~~community residential~~
4 ~~alternative, as defined in the Community Residential~~
5 ~~Alternatives Licensing Act;~~

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

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

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

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

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

16 (xii) the University of Illinois Hospital,
17 Chicago;

18 (xiii) programs funded by the Department on Aging
19 through the Community Care Program;

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

23 (xv) programs listed by the Emergency Medical
24 Services (EMS) Systems Act as Freestanding Emergency
25 Centers;

26 (xvi) locations licensed under the Alternative

1 Health Care Delivery Act;

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

4 (3) a community integrated living arrangement operated
5 by a community mental health and developmental service
6 agency, as defined in the Community-Integrated Living
7 Arrangements Licensing and Certification Act; or

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

12 "Initiate" means ~~the obtaining of the authorization for a~~
13 ~~record check~~ from a student, applicant, or employee his or her
14 social security number, demographics, a disclosure statement,
15 and an authorization for the Department of Public Health or its
16 designee to request a fingerprint-based criminal history
17 records check; transmitting this information electronically to
18 the Department of Public Health; conducting Internet searches
19 on certain web sites, including without limitation the Illinois
20 Sex Offender Registry, the Department of Corrections' Sex
21 Offender Search Engine, the Department of Corrections' Inmate
22 Search Engine, the Department of Corrections Wanted Fugitives
23 Search Engine, the National Sex Offender Public Registry, and
24 the website of the Health and Human Services Office of
25 Inspector General to determine if the applicant has been
26 adjudicated a sex offender, has been a prison inmate, or has

1 committed Medicare or Medicaid fraud, or conducting similar
2 searches as defined by rule; and having the student, applicant,
3 or employee's fingerprints collected and transmitted
4 electronically to the Department of State Police. The
5 educational entity or health care employer or its designee
6 shall transmit all necessary information and fees to the
7 Illinois State Police within 10 working days after receipt of
8 the authorization.

9 "Livescan vendor" means an entity whose equipment has been
10 certified by the Department of State Police to collect an
11 individual's demographics and inkless fingerprints and, in a
12 manner prescribed by the Department of State Police and the
13 Department of Public Health, electronically transmit the
14 fingerprints and required data to the Department of State
15 Police and a daily file of required data to the Department of
16 Public Health. The Department of Public Health shall negotiate
17 a contract with one or more vendors that effectively
18 demonstrate that the vendor has 2 or more years of experience
19 transmitting fingerprints electronically to the Department of
20 State Police and that the vendor can successfully transmit the
21 required data in a manner prescribed by the Department of
22 Public Health. Vendor authorization may be further defined by
23 administrative rule.

24 "Long-term care facility" means a facility licensed by the
25 State or certified under federal law as a long-term care
26 facility, including without limitation facilities licensed

1 under the Nursing Home Care Act, a supportive living facility,
2 an assisted living establishment, or a shared housing
3 establishment or registered as a board and care home.

4 (Source: P.A. 93-878, eff. 1-1-05; 94-379, eff. 1-1-06; 94-570,
5 eff. 8-12-05; 94-665, eff. 1-1-06; revised 8-29-05.)

6 (225 ILCS 46/20)

7 Sec. 20. Exceptions. ~~(1)~~ This Act shall not apply to:

8 (1) ~~(a)~~ an individual who is licensed by the Department
9 of Financial and Professional Regulation or the Department
10 of Public Health under another law of this State;

11 (2) ~~(b)~~ an individual employed or retained by a health
12 care employer for whom a criminal background check is
13 required by another law of this State; or

14 (3) ~~(c)~~ a student in a licensed health care field
15 including, but not limited to, a student nurse, a physical
16 therapy student, or a respiratory care student unless he or
17 she is (i) employed by a health care employer in a position
18 with duties involving direct care for clients, patients, or
19 residents or (ii) employed by a long-term care facility in
20 a position that involves or may involve contact with
21 residents or access to the living quarters or the
22 financial, medical, or personal records of residents.

23 ~~(2) A UCIA criminal history records check need not be~~
24 ~~redone by the University of Illinois Hospital, Chicago (U of I)~~
25 ~~or a program funded by the Department on Aging through the~~

1 ~~Community Care Program (CCP) if the U of I or the CCP: (i) has~~
2 ~~done a UCIA check on the individual; (ii) has continuously~~
3 ~~employed the individual since the UCIA criminal records check~~
4 ~~was done; and (iii) has taken actions with respect to this Act~~
5 ~~within 12 months after the effective date of this amendatory~~
6 ~~Act of the 91st General Assembly.~~

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

8 (225 ILCS 46/25)

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

11 (a) In the discretion of the Director of Public Health, as
12 soon after ~~After~~ January 1, 1996, January 1, 1997, January 1,
13 2006, or October 1, 2007 ~~or the effective date of this~~
14 ~~amendatory Act of the 94th General Assembly,~~ as applicable, and
15 as is reasonably practical, no health care employer shall
16 knowingly hire, employ, or retain any individual in a position
17 with duties involving direct care for clients, patients, or
18 residents, and no long-term care facility shall knowingly hire,
19 employ, or retain any individual in a position with duties that
20 involve or may involve contact with residents or access to the
21 living quarters or the financial, medical, or personal records
22 of residents, who has been convicted of committing or
23 attempting to commit one or more of the offenses defined in
24 Sections 8-1.1, 8-1.2, 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1,
25 9-3.2, 9-3.3, 10-1, 10-2, 10-3, 10-3.1, 10-4, 10-5, 10-7, 11-6,

1 11-9.1, 11-9.5, 11-19.2, 11-20.1, 12-1, 12-2, 12-3, 12-3.1,
2 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6,
3 12-4.7, 12-7.4, 12-11, 12-13, 12-14, 12-14.1, 12-15, 12-16,
4 12-19, 12-21, 12-21.6, 12-32, 12-33, 16-1, 16-1.3, 16A-3, 17-3,
5 18-1, 18-2, 18-3, 18-4, 18-5, 19-1, 19-3, 19-4, 20-1, 20-1.1,
6 24-1, 24-1.2, 24-1.5, or 33A-2 of the Criminal Code of 1961;
7 those provided in Section 4 of the Wrongs to Children Act;
8 those provided in Section 53 of the Criminal Jurisprudence Act;
9 those defined in Section 5, 5.1, 5.2, 7, or 9 of the Cannabis
10 Control Act; those defined in the Methamphetamine Control and
11 Community Protection Act; or those defined in Sections 401,
12 401.1, 404, 405, 405.1, 407, or 407.1 of the Illinois
13 Controlled Substances Act, unless the applicant or employee
14 obtains a waiver pursuant to Section 40.

15 (a-1) In the discretion of the Director of Public Health,
16 as soon after ~~After~~ January 1, 2004 or October 1, 2007, as
17 applicable, and as is reasonably practical, no health care
18 employer shall knowingly hire any individual in a position with
19 duties involving direct care for clients, patients, or
20 residents, and no long-term care facility shall knowingly hire
21 any individual in a position with duties that involve or may
22 involve contact with residents or access to the living quarters
23 or the financial, medical, or personal records of residents,
24 who has (i) been convicted of committing or attempting to
25 commit one or more of the offenses defined in Section 12-3.3,
26 12-4.2-5, 16-2, 16G-15, 16G-20, 18-5, 20-1.2, 24-1.1,

1 24-1.2-5, 24-1.6, 24-3.2, or 24-3.3 of the Criminal Code of
2 1961; Section 4, 5, 6, 8, or 17.02 of the Illinois Credit Card
3 and Debit Card Act; or Section 5.1 of the Wrongs to Children
4 Act; or (ii) violated Section 10-5 of the Nursing and Advanced
5 Practice Nursing Act, unless the applicant or employee obtains
6 a waiver pursuant to Section 40 of this Act.

7 ~~A UCIA criminal history record check need not be redone for~~
8 ~~health care employees who have been continuously employed by a~~
9 ~~health care employer since January 1, 2004, but nothing in this~~
10 ~~Section prohibits a health care employer from initiating a~~
11 ~~criminal history check for these employees.~~

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

21 (b) A health care employer shall not hire, employ, or
22 retain any individual in a position with duties involving
23 direct care of clients, patients, or residents, and no
24 long-term care facility shall knowingly hire, employ, or retain
25 any individual in a position with duties that involve or may
26 involve contact with residents or access to the living quarters

1 or the financial, medical, or personal records of residents, if
2 the health care employer becomes aware that the individual has
3 been convicted in another state of committing or attempting to
4 commit an offense that has the same or similar elements as an
5 offense listed in subsection (a) or (a-1), as verified by court
6 records, records from a state agency, or an FBI criminal
7 history record check, unless the applicant or employee obtains
8 a waiver pursuant to Section 40 of this Act. This shall not be
9 construed to mean that a health care employer has an obligation
10 to conduct a criminal history records check in other states in
11 which an employee has resided.

12 (Source: P.A. 93-224, eff. 7-18-03; 94-556, eff. 9-11-05;
13 94-665, eff. 1-1-06; 94-1053, eff. 7-24-06.)

14 (225 ILCS 46/33 new)

15 Sec. 33. Fingerprint-based criminal history records check.

16 (a) A fingerprint-based criminal history records check is
17 not required for health care employees who have been
18 continuously employed by a health care employer since October
19 1, 2007, have met the requirements for criminal history
20 background checks prior to October 1, 2007, and have no
21 disqualifying convictions or requested and received a waiver of
22 those disqualifying convictions. These employees shall be
23 retained on the Health Care Worker Registry as long as they
24 remain active. Nothing in this subsection (a) shall be
25 construed to prohibit a health care employer from initiating a

1 criminal history records check for these employees. Should
2 these employees seek a new position with a different health
3 care employer, then a fingerprint-based criminal history
4 records check shall be required.

5 (b) On October 1, 2007 or as soon thereafter as is
6 reasonably practical, in the discretion of the Director of
7 Public Health, and thereafter, any student, applicant, or
8 employee who desires to be included on the Department of Public
9 Health's Health Care Worker Registry must authorize the
10 Department of Public Health or its designee to request a
11 fingerprint-based criminal history records check to determine
12 if the individual has a conviction for a disqualifying offense.
13 This authorization shall allow the Department of Public Health
14 to request and receive information and assistance from any
15 State or local governmental agency. Each individual shall
16 submit his or her fingerprints to the Department of State
17 Police in an electronic format that complies with the form and
18 manner for requesting and furnishing criminal history record
19 information prescribed by the Department of State Police. The
20 fingerprints submitted under this Section shall be checked
21 against the fingerprint records now and hereafter filed in the
22 Department of State Police criminal history record databases.
23 The Department of State Police shall charge a fee for
24 conducting the criminal history records check, which shall not
25 exceed the actual cost of the records check. The livescan
26 vendor may act as the designee for individuals, educational

1 entities, or health care employers in the collection of
2 Department of State Police fees and deposit those fees into the
3 State Police Services Fund. The Department of State Police
4 shall provide information concerning any criminal convictions,
5 now or hereafter filed, against the individual.

6 (c) On October 1, 2007 or as soon thereafter as is
7 reasonably practical, in the discretion of the Director of
8 Public Health, and thereafter, an educational entity, other
9 than a secondary school, conducting a nurse aide training
10 program must initiate a fingerprint-based criminal history
11 records check requested by the Department of Public Health
12 prior to entry of an individual into the training program.

13 (d) On October 1, 2007 or as soon thereafter as is
14 reasonably practical, in the discretion of the Director of
15 Public Health, and thereafter, a health care employer who makes
16 a conditional offer of employment to an applicant for a
17 position as an employee must initiate a fingerprint-based
18 criminal history record check, requested by the Department of
19 Public Health, on the applicant, if such a background check has
20 not been previously conducted.

21 (e) When initiating a background check requested by the
22 Department of Public Health, an educational entity or health
23 care employer shall electronically submit to the Department of
24 Public Health the student's, applicant's, or employee's social
25 security number, demographics, disclosure, and authorization
26 information in a format prescribed by the Department of Public

1 Health within 2 working days after the authorization is
2 secured. The student, applicant, or employee must have his or
3 her fingerprints collected electronically and transmitted to
4 the Department of State Police within 10 working days. The
5 educational entity or health care employer must transmit all
6 necessary information and fees to the livescan vendor and
7 Department of State Police within 10 working days after receipt
8 of the authorization. This information and the results of the
9 criminal history record checks shall be maintained by the
10 Department of Public Health's Health Care Worker Registry.

11 (f) A direct care employer may initiate a fingerprint-based
12 background check requested by the Department of Public Health
13 for any of its employees, but may not use this process to
14 initiate background checks for residents. The results of any
15 fingerprint-based background check that is initiated with the
16 Department as the requestor shall be entered in the Health Care
17 Worker Registry.

18 (g) As long as the employee has had a fingerprint-based
19 criminal history record check requested by the Department of
20 Public Health and stays active on the Health Care Worker
21 Registry, no further criminal history record checks shall be
22 deemed necessary, as the Department of State Police shall
23 notify the Department of Public Health of any additional
24 convictions associated with the fingerprints previously
25 submitted. Health care employers are required to check the
26 Health Care Worker Registry before hiring an employee to

1 determine that the individual has had a fingerprint-based
2 record check requested by the Department of Public Health and
3 has no disqualifying convictions or has been granted a waiver
4 pursuant to Section 40 of this Act. If the individual has not
5 had such a background check or is not active on the Health Care
6 Worker Registry, then the health care employer must initiate a
7 fingerprint-based record check requested by the Department of
8 Public Health. If an individual is inactive on the Health Care
9 Worker Registry, that individual is prohibited from being hired
10 to work as a certified nurse aide if, since the individual's
11 most recent completion of a competency test, there has been a
12 period of 24 consecutive months during which the individual has
13 not provided nursing or nursing-related services for pay. If
14 the individual can provide proof of having retained his or her
15 certification by not having a 24 consecutive month break in
16 service for pay, he or she may be hired as a certified nurse
17 aide and that employment information shall be entered into the
18 Health Care Worker Registry.

19 (h) On October 1, 2007 or as soon thereafter as is
20 reasonably practical, in the discretion of the Director of
21 Public Health, and thereafter, if the Department of State
22 Police notifies the Department of Public Health that an
23 employee has a new conviction of a disqualifying offense, based
24 upon the fingerprints that were previously submitted, then (i)
25 the Health Care Worker Registry shall notify the employee's
26 last known employer of the offense, (ii) a record of the

1 employee's disqualifying offense shall be entered on the Health
2 Care Worker Registry, and (iii) the individual shall no longer
3 be eligible to work as an employee unless he or she obtains a
4 waiver pursuant to Section 40 of this Act.

5 (i) On October 1, 2007, or as soon thereafter, in the
6 discretion of the Director of Public Health, as is reasonably
7 practical, and thereafter, each direct care employer or its
8 designee must provide an employment verification for each
9 employee no less than annually. The direct care employer or its
10 designee must log into the Health Care Worker Registry through
11 a secure login. The health care employer or its designee must
12 indicate employment and termination dates within 30 days after
13 hiring or terminating an employee, as well as the employment
14 category and type. Failure to comply with this subsection (i)
15 constitutes a licensing violation. For health care employers
16 that are not licensed or certified, a fine of up to \$500 may be
17 imposed for failure to maintain these records. This information
18 shall be used by the Department of Public Health to notify the
19 last known employer of any disqualifying offenses that are
20 reported by the Department of State Police.

21 (j) The Department of Public Health shall notify each
22 health care employer or long-term care facility inquiring as to
23 the information on the Health Care Worker Registry if the
24 applicant or employee listed on the registry has a
25 disqualifying offense and is therefore ineligible to work or
26 has a waiver pursuant to Section 40 of this Act.

1 (k) The student, applicant, or employee must be notified of
2 each of the following whenever a fingerprint-based criminal
3 history records check is required:

4 (1) That the educational entity, health care employer,
5 or long-term care facility shall initiate a
6 fingerprint-based criminal history record check requested
7 by the Department of Public Health of the student,
8 applicant, or employee pursuant to this Act.

9 (2) That the student, applicant, or employee has a
10 right to obtain a copy of the criminal records report that
11 indicates a conviction for a disqualifying offense and
12 challenge the accuracy and completeness of the report
13 through an established Department of State Police
14 procedure of Access and Review.

15 (3) That the applicant, if hired conditionally, may be
16 terminated if the criminal records report indicates that
17 the applicant has a record of a conviction of any of the
18 criminal offenses enumerated in Section 25, unless the
19 applicant obtains a waiver pursuant to Section 40 of this
20 Act.

21 (4) That the applicant, if not hired conditionally,
22 shall not be hired if the criminal records report indicates
23 that the applicant has a record of a conviction of any of
24 the criminal offenses enumerated in Section 25, unless the
25 applicant obtains a waiver pursuant to Section 40 of this
26 Act.

1 (5) That the employee shall be terminated if the
2 criminal records report indicates that the employee has a
3 record of a conviction of any of the criminal offenses
4 enumerated in Section 25.

5 (6) If, after the employee has originally been
6 determined not to have disqualifying offenses, the
7 employer is notified that the employee has a new
8 conviction(s) of any of the criminal offenses enumerated in
9 Section 25, then the employee shall be terminated.

10 (l) A health care employer or long-term care facility may
11 conditionally employ an applicant for up to 3 months pending
12 the results of a fingerprint-based criminal history record
13 check requested by the Department of Public Health.

14 (m) The Department of Public Health or an entity
15 responsible for inspecting, licensing, certifying, or
16 registering the health care employer or long-term care facility
17 shall be immune from liability for notices given based on the
18 results of a fingerprint-based criminal history record check.

19 (225 ILCS 46/40)

20 Sec. 40. Waiver.

21 (a) Any student, applicant, or employee listed on the
22 Health Care Worker Registry ~~An applicant, employee, or nurse~~
23 ~~aide~~ may request a waiver of the prohibition against employment
24 ~~by submitting the following information to the entity~~
25 ~~responsible for inspecting, licensing, certifying, or~~

1 ~~registering the health care employer within 5 working days~~
2 ~~after the receipt of the criminal records report:~~

3 (1) completing a waiver application on a form
4 prescribed by the Department of Public Health; Information
5 necessary to initiate a fingerprint based UCIA criminal
6 records check in a form and manner prescribed by the
7 Department of State Police; and

8 (2) providing a written explanation of each conviction
9 to include (i) what happened, (ii) how many years have
10 passed since the offense, (iii) the individuals involved,
11 (iv) the age of the applicant at the time of the offense,
12 and (v) any other circumstances surrounding the offense;
13 and

14 (3) providing official documentation showing that all
15 finances have been paid, if applicable, and the date probation
16 or parole was satisfactorily completed, if applicable. The
17 fee for a fingerprint based UCIA criminal records check,
18 which shall not exceed the actual cost of the record check.

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

24 (b) The applicant may, but is not required to, submit
25 employment and character references and any other evidence
26 demonstrating the ability of the applicant or employee to

1 perform the employment responsibilities competently and
2 evidence that the applicant or employee does not pose a threat
3 to the health or safety of residents, patients, or clients. ~~The~~
4 ~~entity responsible for inspecting, licensing, certifying, or~~
5 ~~registering the health care employer may grant a waiver based~~
6 ~~upon any mitigating circumstances, which may include, but need~~
7 ~~not be limited to:~~

8 ~~(1) The age of the individual at which the crime was~~
9 ~~committed;~~

10 ~~(2) The circumstances surrounding the crime;~~

11 ~~(3) The length of time since the conviction;~~

12 ~~(4) The applicant or employee's criminal history since~~
13 ~~the conviction;~~

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

15 ~~(6) The applicant or employee's current employment~~
16 ~~references;~~

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

18 ~~(8) Nurse aide registry records; and~~

19 ~~(9) Other evidence demonstrating the ability of the~~
20 ~~applicant or employee to perform the employment~~
21 ~~responsibilities competently and evidence that the~~
22 ~~applicant or employee does not pose a threat to the health~~
23 ~~or safety of residents, patients, or clients.~~

24 (c) The Department of Public Health ~~entity responsible for~~
25 ~~inspecting, licensing, certifying, or registering a health~~
26 ~~care employer must inform the health care employer must inform~~

1 health care employers if a waiver is being sought by entering a
2 record on the Health Care Worker Registry that a waiver is
3 pending and must act upon the waiver request within 30 days of
4 receipt of all necessary information, as defined by rule.
5 Except in cases where a rehabilitation waiver is granted, a
6 letter shall be sent to the applicant notifying the applicant
7 that he or she has received an automatic waiver.

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

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

25 (f) A health care employer is not obligated to employ or
26 offer permanent employment to an applicant, or to retain an

1 employee who is granted a waiver under this Section.

2 (Source: P.A. 94-665, eff. 1-1-06.)

3 (225 ILCS 46/45)

4 Sec. 45. Application fees. Except as otherwise provided in
5 this Act, the student, applicant, or employee, other than a
6 nurse aide, may be required to pay all related application and
7 fingerprinting fees including, but not limited to, the amounts
8 established ~~by the UCIA to conduct UCIA criminal history record~~
9 ~~checks and the amounts established~~ by the Department of State
10 Police to process fingerprint-based ~~UCIA~~ criminal history
11 records checks. If a health care employer certified to
12 participate in the Medicaid program pays the fees, the fees
13 shall be a direct pass-through on the cost report submitted by
14 the employer to the Medicaid agency.

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

16 (225 ILCS 46/50)

17 Sec. 50. Health care employer files. The health care
18 employer shall retain on file for a period of 5 years records
19 of criminal records requests for all employees. The health care
20 employer shall retain a copy of the disclosure and
21 authorization forms, a copy of the livescan request form, all
22 notifications resulting from the ~~results of the UCIA~~
23 fingerprint-based criminal history records check and waiver,
24 if appropriate, for the duration of the individual's

1 employment. The files shall be subject to inspection by the
2 agency responsible for inspecting, licensing, or certifying
3 the health care employer. A fine of up to \$500 may be imposed
4 by the appropriate agency for failure to maintain these
5 records. The Department of Public Health must keep an
6 electronic record of criminal history background checks for an
7 individual for as long as the individual remains active on the
8 Health Care Worker Registry.

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

10 (225 ILCS 46/55)

11 Sec. 55. Immunity from liability. A health care employer
12 shall not be liable for the failure to hire or to retain an
13 applicant or employee who has been convicted of committing or
14 attempting to commit one or more of the offenses enumerated in
15 subsection (a) of Section 25 of this Act. However, if an
16 employee ~~a health care worker~~ is suspended from employment
17 based on the results of a criminal background check conducted
18 under this Act and the results prompting the suspension are
19 subsequently found to be inaccurate, the employee ~~health care~~
20 ~~worker~~ is entitled to recover backpay from his or her health
21 care employer for the suspension period provided that the
22 employer is the cause of the inaccuracy. The Department of
23 Public Health is not liable for any hiring decisions,
24 suspensions, or terminations.

25 No health care employer shall be chargeable for any benefit

1 charges that result from the payment of unemployment benefits
2 to any claimant when the claimant's separation from that
3 employer occurred because the claimant's criminal background
4 included an offense enumerated in subsection (a) of Section 25,
5 or the claimant's separation from that health care employer
6 occurred as a result of the claimant violating a policy that
7 the employer was required to maintain pursuant to the Drug Free
8 Workplace Act.

9 (Source: P.A. 90-441, eff. 1-1-98; 91-598, eff. 1-1-00.)

10 (225 ILCS 46/60)

11 Sec. 60. Offense.

12 (a) Any person whose profession is job counseling who
13 knowingly counsels any person who has been convicted of
14 committing or attempting to commit any of the offenses
15 enumerated in subsection (a) of Section 25 to apply for a
16 position with duties involving direct contact with a client,
17 patient, or resident of a health care employer or a position
18 with duties that involve or may involve contact with residents
19 or access to the living quarters or the financial, medical, or
20 personal records of residents of a long-term care facility
21 shall be guilty of a Class A misdemeanor unless a waiver is
22 granted pursuant to Section 40 of this Act.

23 (b) Subsection (a) does not apply to an individual
24 performing official duties in connection with the
25 administration of the State employment service described in

1 Section 1705 of the Unemployment Insurance Act.

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

3 (225 ILCS 46/25.1 rep.)

4 (225 ILCS 46/30 rep.)

5 (225 ILCS 46/35 rep.)

6 Section 10. The Health Care Worker Background Check Act is
7 amended by repealing Sections 25.1, 30, and 35.

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.