

# HB5698



## 98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB5698

by Rep. Dwight Kay

### SYNOPSIS AS INTRODUCED:

210 ILCS 55/6.3  
225 ILCS 46/33

Amends the Home Health, Home Services, and Home Nursing Agency Licensing Act and the Health Care Worker Background Check Act. Makes technical changes in Sections concerning (i) standards and fees in connection with home services agencies and (ii) fingerprint-based criminal history records checks, respectively.

LRB098 17069 RPS 52154 b

A BILL FOR

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 Home Health, Home Services, and Home Nursing  
5 Agency Licensing Act is amended by changing Section 6.3 as  
6 follows:

7 (210 ILCS 55/6.3)

8 Sec. 6.3. Home services agencies; standards; fees.

9 (a) Before January 1, 2008, the ~~the~~ Department shall adopt  
10 standards for the licensure and operation of home services  
11 agencies operated in this State. The structure of the standards  
12 shall be based on the concept of home services and its focus on  
13 assistance with activities of daily living, housekeeping,  
14 personal laundry, and companionship being provided to an  
15 individual intended to enable that individual to remain safely  
16 and comfortably in his or her own personal residence. As home  
17 services do not include services that would be required to be  
18 performed by an individual licensed under the Nurse Practice  
19 Act, the standards shall be developed from a similar concept.  
20 After consideration and recommendations by the Home Health and  
21 Home Services Advisory Committee, the Department shall adopt  
22 such rules and regulations as are necessary for the proper  
23 regulation of home services agencies. Requirements for

1 licensure as a home services agency shall include the  
2 following:

3 (1) Compliance with the requirements of the Health Care  
4 Worker Background Check Act.

5 (2) Notification, in a form and manner established by  
6 the Department by rule, to home services workers and  
7 consumers as to the party or parties responsible under  
8 State and federal laws for payment of employment taxes,  
9 social security taxes, and workers' compensation,  
10 liability, the day-to-day supervision of workers, and the  
11 hiring, firing, and discipline of workers with the  
12 placement arrangement for home services.

13 (3) Compliance with rules, as adopted by the  
14 Department, in regard to (i) reporting by the licensee of  
15 any known or suspected incidences of abuse, neglect, or  
16 financial exploitation of an eligible adult, as defined in  
17 the Adult Protective Services Act, by a home services  
18 worker employed by or placed by the licensee or (ii)  
19 reports to a law enforcement agency in connection with any  
20 other individual protected under the laws of the State of  
21 Illinois.

22 (4) Compliance with rules, as adopted by the  
23 Department, addressing the health, safety, and well-being  
24 of clients receiving home services.

25 (b) The Department may establish fees for home services  
26 agency licensure in rules in a manner that will make the

1 program self-supporting. The amount of the licensure fees shall  
2 be based on the funding required for operation of the licensure  
3 program. Notwithstanding any other provision of this Section,  
4 the Department may not charge any fee to a certified local  
5 health department in connection with the licensure of a home  
6 services agency.

7 (Source: P.A. 98-49, eff. 7-1-13.)

8 Section 10. The Health Care Worker Background Check Act is  
9 amended by changing Section 33 as follows:

10 (225 ILCS 46/33)

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

12 (a) A fingerprint-based criminal history records check is  
13 not required for health care employees who ~~who~~ have been  
14 continuously employed by a health care employer since October  
15 1, 2007, have met the requirements for criminal history  
16 background checks prior to October 1, 2007, and have no  
17 disqualifying convictions or requested and received a waiver of  
18 those disqualifying convictions. These employees shall be  
19 retained on the Health Care Worker Registry as long as they  
20 remain active. Nothing in this subsection (a) shall be  
21 construed to prohibit a health care employer from initiating a  
22 criminal history records check for these employees. Should  
23 these employees seek a new position with a different health  
24 care employer, then a fingerprint-based criminal history

1 records check shall be required.

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

1 shall provide information concerning any criminal convictions,  
2 now or hereafter filed, against the individual.

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

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

18 (e) When initiating a background check requested by the  
19 Department of Public Health, an educational entity or health  
20 care employer shall electronically submit to the Department of  
21 Public Health the student's, applicant's, or employee's social  
22 security number, demographics, disclosure, and authorization  
23 information in a format prescribed by the Department of Public  
24 Health within 2 working days after the authorization is  
25 secured. The student, applicant, or employee must have his or  
26 her fingerprints collected electronically and transmitted to

1 the Department of State Police within 10 working days. The  
2 educational entity or health care employer must transmit all  
3 necessary information and fees to the livescan vendor and  
4 Department of State Police within 10 working days after receipt  
5 of the authorization. This information and the results of the  
6 criminal history record checks shall be maintained by the  
7 Department of Public Health's Health Care Worker Registry.

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

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

1 pursuant to Section 40 of this Act. If the individual has not  
2 had such a background check or is not active on the Health Care  
3 Worker Registry, then the health care employer must initiate a  
4 fingerprint-based record check requested by the Department of  
5 Public Health. If an individual is inactive on the Health Care  
6 Worker Registry, that individual is prohibited from being hired  
7 to work as a certified nurse aide if, since the individual's  
8 most recent completion of a competency test, there has been a  
9 period of 24 consecutive months during which the individual has  
10 not provided nursing or nursing-related services for pay. If  
11 the individual can provide proof of having retained his or her  
12 certification by not having a 24 consecutive month break in  
13 service for pay, he or she may be hired as a certified nurse  
14 aide and that employment information shall be entered into the  
15 Health Care Worker Registry.

16 (h) On October 1, 2007 or as soon thereafter as is  
17 reasonably practical, in the discretion of the Director of  
18 Public Health, and thereafter, if the Department of State  
19 Police notifies the Department of Public Health that an  
20 employee has a new conviction of a disqualifying offense, based  
21 upon the fingerprints that were previously submitted, then (i)  
22 the Health Care Worker Registry shall notify the employee's  
23 last known employer of the offense, (ii) a record of the  
24 employee's disqualifying offense shall be entered on the Health  
25 Care Worker Registry, and (iii) the individual shall no longer  
26 be eligible to work as an employee unless he or she obtains a



1 waiver pursuant to Section 40 of this Act.

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

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

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

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

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

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

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

24          (5) That the employee shall be terminated if the  
25          criminal records report indicates that the employee has a  
26          record of a conviction of any of the criminal offenses

1 enumerated in Section 25.

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

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

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

16 (Source: P.A. 95-120, eff. 8-13-07.)