

AN ACT concerning regulation.

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

Section 5. The Health Care Worker Background Check Act is amended by changing Sections 5, 10, 15, 25, 30, and 40 and by adding Section 70 as follows:

(225 ILCS 46/5)

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

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

(225 ILCS 46/10)

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

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

(225 ILCS 46/15)

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

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

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

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

"Health care employer" means:

- (1) the owner or licensee of any of the following:
 - (i) a community living facility, as defined in the Community Living Facilities Act;
 - (ii) a life care facility, as defined in the Life Care Facilities Act;
 - (iii) a long-term care facility, as defined in the Nursing Home Care Act;
 - (iv) a home health agency, as defined in the Home Health Agency Licensing Act;
 - (v) a full hospice, as defined in the Hospice Program Licensing Act;
 - (vi) a hospital, as defined in the Hospital Licensing Act;
 - (vii) a community residential alternative, as defined in the Community Residential Alternatives Licensing Act;

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

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

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

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

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

(xii) the University of Illinois Hospital, Chicago;

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

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

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

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

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

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

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

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

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

"Long-term care facility" means a facility licensed by the State or certified under federal law as a long-term care facility, a supportive living facility, an assisted living establishment, or a shared housing establishment or registered as a board and care home.

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

(225 ILCS 46/25)

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

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

40.

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

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

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

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

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

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

(225 ILCS 46/30)

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

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

(b) The Department of Public Health shall notify each

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

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

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

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

records of residents.

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

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

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

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

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

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

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

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

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

(225 ILCS 46/40)

Sec. 40. Waiver.

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

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

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

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

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

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

(2) The circumstances surrounding the crime;

(3) The length of time since the conviction;

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

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

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

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

(8) Nurse aide registry records; and

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

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

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

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

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

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

(225 ILCS 46/70 new)

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

(a) In this Section:

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

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

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

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

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

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

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

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

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

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

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

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

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

care employers must comply with Section 25 of this Act.

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

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

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

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

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

- (1) ensure that the applicant has complied with the fingerprinting requirements of this Section;
- (2) complete documentation relating to any criminal

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

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

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

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

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

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