



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB4665

by Rep. Robyn Gabel

SYNOPSIS AS INTRODUCED:

See Index

Amends the Mental Health and Developmental Disabilities Administrative Act. Provides that the Division of Developmental Disabilities of the Department of Human Services shall implement a direct support professional credential pilot program to assist and attract persons into the field of direct support, advance direct support as a career, and professionalize the developmental disabilities field to promote workforce recruitment and retention efforts, advance skills and competencies, and further ensure the health, safety, and well-being of persons being served. Amends the Health Care Worker Background Check Act. Defines "nursing or nursing-related services for pay". Amends the Nurse Practice Act. Provides that a certified nursing assistant shall lose his or her certification status if he or she goes 24 consecutive months without performing nursing or nursing-related services for pay. Amends the Illinois Public Aid Code. Provides that the Department of Healthcare and Family Services and the Department of Human Services shall jointly submit the necessary application to the federal Centers for Medicare and Medicaid Services for a waiver or State Plan Amendment to allow remote monitoring and supports services for persons with intellectual and developmental disabilities and seniors requiring in-home care, as a waiver reimbursable service. Provides that the application shall be submitted no later than September 30, 2018. Effective immediately.

LRB100 16246 RLC 31369 b

FISCAL NOTE ACT
MAY APPLY

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 Mental Health and Developmental
5 Disabilities Administrative Act is amended by adding Section
6 4.4 as follows:

7 (20 ILCS 1705/4.4 new)

8 Sec. 4.4. Direct support professional credential pilot
9 program.

10 (a) In this Section, "direct support professional
11 credential" means a document issued to an individual by a
12 recognized accrediting body attesting that the individual has
13 met the professional requirements of the credentialing program
14 by the Division of Developmental Disabilities of the Department
15 of Human Services.

16 (b) The Division shall initiate a program to continue to
17 gain the expertise and knowledge of the developmental
18 disabilities workforce and of the developmental disabilities
19 workforce recruitment and retention needs throughout the
20 developmental disabilities field. The Division shall implement
21 a direct support professional credential pilot program to
22 assist and attract persons into the field of direct support,
23 advance direct support as a career, and professionalize the

1 field to promote workforce recruitment and retention efforts,
2 advance skills and competencies, and further ensure the health,
3 safety, and well-being of persons being served.

4 (c) The direct support professional credential pilot
5 program is created within the Division to assist persons in the
6 field of developmental disabilities to obtain credentials in
7 their fields of expertise.

8 (d) The pilot program shall be administered by the Division
9 for 3 years. The pilot program shall include State-operated
10 facilities and not-for-profit providers, licensed and
11 certified by the Division. The purpose of the pilot program is
12 to assess how the establishment of a State-accredited direct
13 support professional credential:

14 (1) promotes recruitment and retention efforts in the
15 developmental disabilities field, notably the direct
16 support professional position;

17 (2) enhances competence in the developmental
18 disabilities field;

19 (3) yields quality supports and services to persons
20 with developmental disabilities; and

21 (4) advances the health and safety requirements set
22 forth by the State.

23 (e) The Division, in administering the pilot program, shall
24 consider, but is not limited to, the following:

25 (1) best practices learning initiatives, including the
26 University of Minnesota's college of direct support and all

1 Department of Human Services-approved direct support
2 professional competencies;

3 (2) national direct support professional competencies
4 or credentialing-based standards and trainings;

5 (3) facilitating direct support professionals'
6 portfolio development;

7 (4) the role and value of skill mentors; and

8 (5) creating a career ladder.

9 (f) The Division shall produce a report detailing the
10 progress of the pilot program, including, but not limited to:

11 (1) the rate of recruitment and retention for direct
12 support professionals of providers participating in the
13 pilot program compared to the rate for non-participating
14 providers;

15 (2) the number of direct support professionals
16 credentialed; and

17 (3) the enhancement of quality supports and services to
18 persons with developmental disabilities.

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

21 (225 ILCS 46/33)

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

23 (a) A fingerprint-based criminal history records check is
24 not required for health care employees who have been

1 continuously employed by a health care employer since October
2 1, 2007, have met the requirements for criminal history
3 background checks prior to October 1, 2007, and have no
4 disqualifying convictions or requested and received a waiver of
5 those disqualifying convictions. These employees shall be
6 retained on the Health Care Worker Registry as long as they
7 remain active. Nothing in this subsection (a) shall be
8 construed to prohibit a health care employer from initiating a
9 criminal history records check for these employees. Should
10 these employees seek a new position with a different health
11 care employer, then a fingerprint-based criminal history
12 records check shall be required.

13 (b) 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, any student, applicant, or
16 employee who desires to be included on the Department of Public
17 Health's Health Care Worker Registry shall authorize the
18 Department of Public Health or its designee to request a
19 fingerprint-based criminal history records check to determine
20 if the individual has a conviction for a disqualifying offense.
21 This authorization shall allow the Department of Public Health
22 to request and receive information and assistance from any
23 State or governmental agency. Each individual shall submit his
24 or her fingerprints to the Department of State Police in an
25 electronic format that complies with the form and manner for
26 requesting and furnishing criminal history record information

1 prescribed by the Department of State Police. The fingerprints
2 submitted under this Section shall be checked against the
3 fingerprint records now and hereafter filed in the Department
4 of State Police criminal history record databases. The
5 Department of State Police shall charge a fee for conducting
6 the criminal history records check, which shall not exceed the
7 actual cost of the records check. The livescan vendor may act
8 as the designee for individuals, educational entities, or
9 health care employers in the collection of Department of State
10 Police fees and deposit those fees into the State Police
11 Services Fund. The Department of State Police shall provide
12 information concerning any criminal convictions, now or
13 hereafter filed, against the individual.

14 (c) On October 1, 2007 or as soon thereafter as is
15 reasonably practical, in the discretion of the Director of
16 Public Health, and thereafter, an educational entity, other
17 than a secondary school, conducting a nurse aide training
18 program shall initiate a fingerprint-based criminal history
19 records check required by this Act prior to entry of an
20 individual into the training program.

21 (d) On October 1, 2007 or as soon thereafter as is
22 reasonably practical, in the discretion of the Director of
23 Public Health, and thereafter, a health care employer who makes
24 a conditional offer of employment to an applicant for a
25 position as an employee shall initiate a fingerprint-based
26 criminal history record check, requested by the Department of

1 Public Health, on the applicant, if such a background check has
2 not been previously conducted.

3 (e) When initiating a background check requested by the
4 Department of Public Health, an educational entity or health
5 care employer shall electronically submit to the Department of
6 Public Health the student's, applicant's, or employee's social
7 security number, demographics, disclosure, and authorization
8 information in a format prescribed by the Department of Public
9 Health within 2 working days after the authorization is
10 secured. The student, applicant, or employee shall have his or
11 her fingerprints collected electronically and transmitted to
12 the Department of State Police within 10 working days. The
13 educational entity or health care employer shall transmit all
14 necessary information and fees to the livescan vendor and
15 Department of State Police within 10 working days after receipt
16 of the authorization. This information and the results of the
17 criminal history record checks shall be maintained by the
18 Department of Public Health's Health Care Worker Registry.

19 (f) A direct care employer may initiate a fingerprint-based
20 background check required by this Act for any of its employees,
21 but may not use this process to initiate background checks for
22 residents. The results of any fingerprint-based background
23 check that is initiated with the Department as the requester
24 shall be entered in the Health Care Worker Registry.

25 (g) As long as the employee has had a fingerprint-based
26 criminal history record check required by this Act and stays

1 active on the Health Care Worker Registry, no further criminal
2 history record checks are required, as the Department of State
3 Police shall notify the Department of Public Health of any
4 additional convictions associated with the fingerprints
5 previously submitted. Health care employers shall check the
6 Health Care Worker Registry before hiring an employee to
7 determine that the individual has had a fingerprint-based
8 record check required by this Act and has no disqualifying
9 convictions or has been granted a waiver pursuant to Section 40
10 of this Act. If the individual has not had such a background
11 check or is not active on the Health Care Worker Registry, then
12 the health care employer shall initiate a fingerprint-based
13 record check requested by the Department of Public Health. If
14 an individual is inactive on the Health Care Worker Registry,
15 that individual is prohibited from being hired to work as a
16 certified nursing assistant if, since the individual's most
17 recent completion of a competency test, there has been a period
18 of 24 consecutive months during which the individual has not
19 provided nursing or nursing-related services for pay. If the
20 individual can provide proof of having retained his or her
21 certification by not having a 24-consecutive-month break in
22 service for pay, he or she may be hired as a certified nursing
23 assistant and that employment information shall be entered into
24 the Health Care Worker Registry. As used in this Section,
25 "nursing or nursing-related services for pay" includes work
26 performed as a direct support professional as it is defined in

1 the Community Services Act.

2 (h) 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, if the Department of State
5 Police notifies the Department of Public Health that an
6 employee has a new conviction of a disqualifying offense, based
7 upon the fingerprints that were previously submitted, then (i)
8 the Health Care Worker Registry shall notify the employee's
9 last known employer of the offense, (ii) a record of the
10 employee's disqualifying offense shall be entered on the Health
11 Care Worker Registry, and (iii) the individual shall no longer
12 be eligible to work as an employee unless he or she obtains a
13 waiver pursuant to Section 40 of this Act.

14 (i) On October 1, 2007, or as soon thereafter, in the
15 discretion of the Director of Public Health, as is reasonably
16 practical, and thereafter, each direct care employer or its
17 designee shall provide an employment verification for each
18 employee no less than annually. The direct care employer or its
19 designee shall log into the Health Care Worker Registry through
20 a secure login. The health care employer or its designee shall
21 indicate employment and termination dates within 30 days after
22 hiring or terminating an employee, as well as the employment
23 category and type. Failure to comply with this subsection (i)
24 constitutes a licensing violation. A fine of up to \$500 may be
25 imposed for failure to maintain these records. This information
26 shall be used by the Department of Public Health to notify the

1 last known employer of any disqualifying offenses that are
2 reported by the Department of State Police.

3 (j) In the event that an applicant or employee has a waiver
4 for one or more disqualifying offenses pursuant to Section 40
5 of this Act and he or she is otherwise eligible to work, the
6 Health Care Worker Registry shall indicate that the applicant
7 or employee is eligible to work and that additional information
8 is available on the Health Care Worker Registry. The Health
9 Care Worker Registry may indicate that the applicant or
10 employee has received a waiver.

11 (k) The student, applicant, or employee shall be notified
12 of each of the following whenever a fingerprint-based criminal
13 history records check is required:

14 (1) That the educational entity, health care employer,
15 or long-term care facility shall initiate a
16 fingerprint-based criminal history record check required
17 by this Act of the student, applicant, or employee.

18 (2) That the student, applicant, or employee has a
19 right to obtain a copy of the criminal records report that
20 indicates a conviction for a disqualifying offense and
21 challenge the accuracy and completeness of the report
22 through an established Department of State Police
23 procedure of Access and Review.

24 (3) That the applicant, if hired conditionally, may be
25 terminated if the criminal records report indicates that
26 the applicant has a record of a conviction of any of the

1 criminal offenses enumerated in Section 25, unless the
2 applicant obtains a waiver pursuant to Section 40 of this
3 Act.

4 (4) That the applicant, if not hired conditionally,
5 shall not be hired if the criminal records report indicates
6 that the applicant has a record of a conviction of any of
7 the criminal offenses enumerated in Section 25, unless the
8 applicant obtains a waiver pursuant to Section 40 of this
9 Act.

10 (5) That the employee shall be terminated if the
11 criminal records report indicates that the employee has a
12 record of a conviction of any of the criminal offenses
13 enumerated in Section 25.

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

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

23 (m) The Department of Public Health or an entity
24 responsible for inspecting, licensing, certifying, or
25 registering the health care employer or long-term care facility
26 shall be immune from liability for notices given based on the

1 results of a fingerprint-based criminal history record check.
2 (Source: P.A. 99-872, eff. 1-1-17; 100-432, eff. 8-25-17.)

3 Section 15. The Nurse Practice Act is amended by adding
4 Section 80-41 as follows:

5 (225 ILCS 65/80-41 new)

6 Sec. 80-41. Certification status for certified nursing
7 assistants. A certified nursing assistant shall lose his or
8 her certification status if he or she goes 24 consecutive
9 months without performing nursing or nursing-related services
10 for pay. In this Section, "nursing or nursing related services"
11 includes work performed as a direct support professional as it
12 is defined in the Community Services Act.

13 Section 20. The Illinois Public Aid Code is amended by
14 adding Section 12-21.21 as follows:

15 (305 ILCS 5/12-21.21 new)

16 Sec. 12-21.21. Federal waiver or State Plan Amendment. The
17 Department of Healthcare and Family Services and the Department
18 of Human Services shall jointly submit the necessary
19 application to the federal Centers for Medicare and Medicaid
20 Services for a waiver or State Plan Amendment to allow remote
21 monitoring and supports services for persons with intellectual
22 and developmental disabilities and seniors requiring in-home

1 care, as a waiver reimbursable service. The application shall
2 be submitted no later than September 30, 2018.

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.

1

INDEX

2

Statutes amended in order of appearance

3

20 ILCS 1705/4.4 new

4

225 ILCS 46/33

5

225 ILCS 65/80-41 new

6

305 ILCS 5/12-21.21 new