

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER d: LICENSING ADMINISTRATION

PART 385
BACKGROUND CHECKS

SUBPART A: GENERAL PROVISIONS

Section

385.10 Purpose
385.20 Definitions

SUBPART B: DAY CARE FACILITIES

Section

385.30 Background Checks for Day Care Homes, Group Day Care Homes, and Day Care Centers
~~Applicability of This Part~~
385.31 Probationary Day Care Employees
385.32 Parental Involvement
385.33 Non-Licensed Service Providers that Operate Within a Family Home
385.34 Additional Restrictions for Day Care Facilities

SUBPART C: FOSTER FAMILY HOMES AND HOST HOMES

Section

385.35 Background Checks for Foster Family Homes and Host Homes
385.36 Placement Decisions in Foster Family Homes

SUBPART D: CHILD WELFARE AGENCIES AND CONGREGATE CARE FACILITIES

Section

385.37 Background Checks for Child Welfare Agencies and Congregate Care Facilities
385.38 Pre-Hire Offer of Employment for Child Welfare Agencies and Congregate Care Facilities

SUBPART E: AUTHORIZATION AND RESULTS OF BACKGROUND CHECK

Section

385.40 Authorization for Background Checks
385.50 Child Abuse or Child Neglect
385.60 Criminal Convictions and Pending Criminal Charges
385.70 Disposition of Background Checks

44 385.80 Appeal of Decision to Deny License or Permit Based on Background Check
45 Information

46
47 SUBPART F: RECORDS MAINTENANCE AND CONFIDENTIALITY

48
49 Section

50 385.90 Records to be Maintained by the Child Care Facility
51 385.100 Confidentiality of Background Check Information

52
53 SUBPART G: SEVERABILITY OF THIS PART

54
55 Section

56 385.110 Severability of This Part

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58 385.APPENDIX A Criminal Convictions Preventing Licensure, Employment, or Residence in
59 a Family Home in Which a Child Care Facility Operates, ~~or Placement~~
60 ~~with Relatives~~

61 385.APPENDIX B Matrix of Persons Subject to Background Checks Under Part 385
62 (Repealed)

63
64 AUTHORITY: Implementing and authorized by the Child Care Act of 1969 [225 ILCS 10];
65 Section 5 (v-1) and (v-2) of the Children and Family Services Act [20 ILCS 505]; Section 2605-
66 335 of the Civil Administrative Code of Illinois. (Illinois State Police Law) [20 ILCS 2605];
67 Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248); Child Care and
68 Development Block Grant Act (P.L. 113-186) and 45 CFR 98.43; and Social Security Act, Title
69 IV-E, Section 471 (a)(20)(A)(i) and (ii), (B)(i) and (ii), (C), and (D).

70
71 SOURCE: Emergency rules adopted at 10 Ill. Reg. 19123, effective October 29, 1986, for a
72 maximum of 150 days; adopted at 11 Ill. Reg. 6398, effective March 31, 1987; amended at 13 Ill.
73 Reg. 5917, effective May 1, 1989; emergency amendment at 20 Ill. Reg. 3930, effective March
74 1, 1996, for a maximum of 150 days; modified in response to Joint Committee on Administrative
75 Rules objection at 20 Ill. Reg. 5712; emergency expired July 28, 1996; amended at 21 Ill. Reg.
76 4444, effective April 1, 1997; emergency amendment at 28 Ill. Reg. 1167, effective January 1,
77 2004, for a maximum of 150 days; emergency expired May 29, 2004; amended at 28 Ill. Reg.
78 13432, effective September 30, 2004; amended at 33 Ill. Reg. 4117, effective February 27, 2009;
79 amended at 36 Ill. Reg. 2136, effective January 30, 2012; amended at 37 Ill. Reg. 12827,
80 effective July 30, 2013; amended at 39 Ill. Reg. 5384, effective March 25, 2015; amended at 45
81 Ill. Reg. 12963, effective September 28, 2021; amended at 50 Ill. Reg. _____, effective
82 _____.

83
84 SUBPART A: GENERAL PROVISIONS

85
86 **Section 385.10 Purpose**

87
88 The purpose of this Part is to ensure the safety and ~~well-being~~well being of children cared for by
89 non-licensed service providers, or in ~~an unlicensed relative home or in~~ any child care facility
90 subject to licensing by the Department of Children and Family Services by requiring that the
91 operators of child care facilities and other persons subject to background checks, as defined in
92 this Part~~the Child Care Act of 1969 [225 ILCS 10/4.2] and Section 385.20~~, be screened for a
93 history of child abuse or child neglect, a history of sex offender registration, prior criminal
94 convictions, ~~and~~or pending criminal charges.

95
96 (Source: Amended at 50 Ill. Reg. _____, effective _____)
97

98 **Section 385.20 Definitions**
99

100 "Access to children" means ~~an a child care facility~~ employee's job duties requires
101 that~~require~~ the employee ~~to~~ be present in a licensed child care facility during the
102 hours that children are present in the child care facility. In addition, any person
103 who is permitted to be alone outside the visual and auditory supervision of child
104 care facility staff with children ~~present~~receiving care in a licensed child care
105 facility is considered to have access to children~~subject to the background check~~
106 ~~requirements of this Part.~~

107
108 "Adult" means any person who is 18 years of age or older.
109

110 ~~"Assistant" or "child care assistant" means a person whose credentials have been~~
111 ~~evaluated and approved by the DCFS Licensing Division for the purpose of~~
112 ~~assisting a licensed home caregiver in the operation of the day care home, group~~
113 ~~day care home, or foster family home.~~
114

115 "Authorization for background check" means a complete, signed form prescribed
116 by the Department which authorizes a background check as defined in this Part
117 ~~and submission of fingerprints, if required.~~ An authorization for a background
118 check may be used for the initial and all subsequent background checks required
119 to determine compliance with the requirements of this Part.
120

121 "Background check" means a partial or comprehensive criminal background
122 clearance, or a child welfare agency/congregate care background clearance for all
123 eligible individuals living or working in a licensed child care facility or non-
124 licensed service provider.‡
125

126 ~~a criminal history check via fingerprints of persons age 18 and over that~~
127 ~~are submitted to the Illinois State Police (ISP) and the Federal Bureau of~~
128 ~~Investigation (FBI) for comparison to their criminal history records or the~~
129 ~~National Crime Information Database (NCID) when applicable for~~

130 ~~prospective foster and adoptive parents; and~~

131
132 ~~a check of the Child Abuse and Neglect Tracking System/Statewide~~
133 ~~Automated Child Welfare Information System (CANTS/SACWIS) and~~
134 ~~other state child protection systems, and the National Registry to~~
135 ~~determine whether an individual is currently alleged or has been indicated~~
136 ~~as a perpetrator of child abuse or neglect; and~~

137
138 ~~a check of the Illinois and National Sex Offender Registries.~~

139
140 "Background check clearance" means the Department has communicated to the
141 employer that the background check did not identify any disqualifying offenses.

142
143 "Child" means any person under 18 years of age. For purposes of admission to
144 and residence in child care institutions, group homes, and maternity centers, the
145 term also means any person under 21 years of age who is referred by a parent or
146 guardian, including an agency having legal responsibility for the person pursuant
147 to the Juvenile Court Act or the Juvenile Court Act of 1987. [225 ILCS
148 10.201](Section 2.01 of the Child Care Act)

149
150 "Child Care Act" means the Illinois Child Care Act of 1969 [225 ILCS 10].

151
152 "Child care facility" means any person, group of persons, agency, association, ~~or~~
153 organization, corporation, institution, center, or group, whether established for
154 gain or otherwise, who or which receives or arranges for care or placement of
155 one or more children, unrelated to the operator of the facility, apart from the
156 parents, with or without the transfer of the right of custody, in any facility as
157 defined in the Child Care Act~~the Child Care Act~~, established and maintained for
158 the care of children. "Child care facility" includes a relative who is licensed ~~or~~
159 who applies for a license as a foster family home under Section 4 of the Child
160 Care Act. [225 ILCS 10/2.05](Section 2.05 of the Child Care Act) A child care
161 facility includes the following~~also means those~~ facilities ~~defined~~described in the
162 Child Care Act of 1969; ~~including any~~ child care institution, maternity center,
163 child welfare agency, day care center, ~~day care agency~~, group home, foster family
164 home, host home, day care home, group day care home, ~~partially exempt~~ secure
165 child care facility, or youth emergency shelter.

166
167 "Child Welfare Contributing Agency" or "Contributing Agency" means a public
168 or private entity, that by contract or agreement with the title IV-E agency,
169 provides child abuse and neglect investigations, placement or child welfare case
170 management, or any combination of these to children and families.

171
172 ~~"Conditional employee" means an individual (including any volunteer, unlicensed~~

173 ~~contractual employee, substitute or assistant) who has applied for and been~~
174 ~~conditionally selected to perform child care functions or administrative,~~
175 ~~professional, or support functions that allow access to children and who has~~
176 ~~commenced such duties while awaiting the results of the background check~~
177 ~~required by this Part.~~

178
179 "Congregate care facility" means a child care facility that holds a license issued
180 by the Department for one of the following: Youth Emergency Shelter, Youth
181 Transitional Housing Program, Child Care Institution, Maternity Center, Group
182 Home, or Secure Child Care Facility.

183
184 *"Conviction" means a judgment of conviction or sentence entered upon a plea of*
185 *guilty or upon a verdict or finding of guilty of an offense, rendered by a legally*
186 *constituted jury or by a court of competent jurisdiction authorized to try the case*
187 *without a jury. If judgment is withheld, the plea, verdict, or finding of guilty is not*
188 *a conviction under Illinois law unless and until judgment is entered.* ~~(Section 2-5~~
189 ~~of the Criminal Code of 2012 [720 ILCS 5/2-5])~~

190
191 "Denial of application for license" means the refusal to grant a license or permit to
192 a person, group of persons, agency, association, or organization that applied for a
193 license to operate a child care facility.

194
195 *"Department" or "DCFS" means the Illinois Department of Children and Family*
196 *Services. [225 ILCS 10/2.02]* ~~(Section 2.02 of the Child Care Act)~~

197
198 "Director" means the Director of the Illinois Department of Children and Family
199 Services.

200
201 "Employee" as used in this Part, means any staff person employed by a child care
202 facility, including any paid or unpaid volunteer, unlicensed contractual employee,
203 substitute, or assistant and other support staff who have access to children.

204
205 ~~"Final placement decision" means the decision made by the Department, within~~
206 ~~90 days, including background check results, after the initial placement of a child~~
207 ~~with a relative, to leave or remove the child in the relative home based on the~~
208 ~~evaluation of the results of the criminal background check of the relative and~~
209 ~~household members and based on the best interests of the child.~~

210
211 "Governing body" means the board of directors of a corporation; otherwise, the
212 term means the owners or other persons, agency, association, or organization
213 legally responsible for the operation of the child care facility.

214
215 "Host Homes" means an emergency foster family home under the direction and

216 regular supervision of a licensed child welfare agency, contracted to provide
217 short-term crisis intervention services to youth served under the Comprehensive
218 Community-Based Youth Services program, under the direction of DHS. The
219 youth shall not be under the custody or guardianship of DCFS pursuant to the
220 Juvenile Court Act of 1987. [225 ILCS 10/2.17(g)]

221
222 "Illinois Sex Offender Registry" means the registry of any persons who have been
223 charged of an offense listed in Illinois Compiled Statutes [730 ILCS 150/2(B) and
224 730 ILCS 150/2(C)] when such charge results in one of the following: a
225 conviction for the commission of the offense or attempt to commit the offense; a
226 finding of not guilty by reason of insanity of committing the offense or attempting
227 to commit the offense; or a finding not resulting in an acquittal at a hearing for the
228 alleged commission or attempted commission of the offense.~~person convicted of a~~
229 ~~felony sex crime or an attempt to commit a felony sex crime~~ The database is
230 operated and maintained by the Illinois State Police.

231
232 "Initial background check" means for day care homes, group day care homes, and
233 day care centers only, the following components of a background check have
234 been conducted and a satisfactory result received:

235
236 A clearance from either the FBI fingerprint check; or

237
238 A fingerprint clearance from the state criminal repository in the state
239 where an individual currently resides (for residents of Illinois this is the
240 Illinois State Police (ISP)).

241
242 "License" means a document issued by the Department that authorizes child care
243 facilities to operate in accordance with applicable standards and the provisions of
244 the Child Care Act.

245
246 "*License applicant*" means, for purposes of background checks, *the operator or*
247 *person with direct responsibility for daily operation of the facility to be licensed.*
248 (Section 4.4 of the Child Care Act)

249
250 "Licensing entity" means the Department or a ~~contributing~~supervising agency
251 recommending the license or processing the employment application.

252
253 "Licensing representative" means a person authorized by the Department under
254 the Child Care Act of 1969 to examine facilities for licensure.

255
256 "Member of the household" means a person of any age whose legal residence is at
257 a licensed foster home, host home, day care home or group day care home, or any
258 adult who stays in the home on a regular or part-time basis, including paramours.

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"Minor traffic violation" means a traffic violation under the laws of the State of Illinois or any municipal authority therein or another state or municipal authority that is punishable solely as a petty offense. ~~(Section 6-601 of the Illinois Driver Licensing Law [625 ILCS 5/6-601])~~

"Multi-function agency" means an agency, association, or other organization that operates a child care facility ~~or~~; child welfare agency, ~~or day care agency in~~ addition to other services not subject to licensure under the Child Care Act ~~of 1969~~. A child care facility ~~or~~; child welfare agency, ~~or day care agency~~ may consist of distinct units, divisions, or departments of a multi-function agency. In a multi-function agency, only the persons with direct authority for the operations of the child care facility ~~and those who have access to children, as defined in this Section~~, are subject to the background check requirements of this Part.

"National crime information databases~~Crime Information Database" or "NCID"~~ means the National Crime Information Center (NCIC) and its incorporated criminal history databases, including the Interstate Identification Index.

~~"National Registry" means an electronic national registry of substantiated cases of child abuse and neglect supplied by the states, created by the U.S. Secretary of Health and Human Services in consultation with the U.S. Attorney General.~~

"National Sex Offender Public Website" means the Dru Sjodin National Sex Offender Public Website (NSOPW), a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site.

"National Sex Offender Registry" means an electronic national registry of sex offenders, operated and maintained by the Federal Bureau of Investigation (FBI) National Crime Information Center, established under the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16901 et seq.)~~United States Department of Justice, of any person convicted of a felony sex crime or an attempt to commit a felony sex crime in any state.~~

"Non-Licensed Service Provider" *means an individual or entity that contracts with the Department~~Department~~ to provide child welfare services that enable the Department~~Department~~ to perform its duties under the Abused and Neglected Child Reporting Act [325 ILCS 5], the Child Care Act of 1969, and the Children and Family Services Act [20 ILCS 505]. [225 ILCS 10/2.28]* It also includes a person who provides child care in their home to a child for whom the Department is legally responsible on a weekly basis, ~~such as weekly~~ or several times per week; cares, and caring for no more than 3 children under the age of 12; or receives only children from a single household for less than 24 hours per day.

302 The three children include the family's own children or adopted children and any
303 other persons under the age of 12, whether related or unrelated to the service
304 provider. (See 89 Ill. Adm. Code 377.~~3(d)~~)
305

306 "Operator" means any person responsible for the day-to-day management of the
307 child care facility.
308

309 "Parental involvement" means parental assistance with a child care program such
310 as participation in field trips, parties, attendance on special days for special
311 events, or parental support and cooperation in the classroom.
312

313 ~~"Persons subject to background checks" means:~~

314 ~~the operators of the child care facility;~~

315 ~~all current and conditional employees of the child care facility;~~

316 ~~all direct child welfare agency employees (see 89 Ill. Adm. Code 412);~~

317 ~~any person who is used to replace or supplement staff;~~

318 ~~any person who has access to children, as defined in this Section;~~

319 ~~any person, including non-licensed service providers, who provides~~
320 ~~services that allow unsupervised access to children if the requirement for~~
321 ~~background checks is a condition of a contract or agreement or is required~~
322 ~~otherwise under 89 Ill. Adm. Code 357 (Purchase of Service); and~~

323 ~~volunteers who have unsupervised contact with children.~~

324 ~~If the child care facility operates in a family home, the license applicants and~~
325 ~~all members and prospective members of the household age 13 and over are~~
326 ~~subject to background checks, even if these members of the household are not~~
327 ~~usually present in the home during the hours the child care facility is in~~
328 ~~operation.~~

329 ~~Non-licensed service providers who, on a regular basis, provide care in the~~
330 ~~provider's home to a child for whom the Department is legally responsible~~
331 ~~and all members of the household age 13 or over are subject to background~~
332 ~~checks.~~

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~~For a final placement decision in a relative home, the relative and all members of the household age 18 and over are subject to criminal background checks (see 20 ILCS 505/5(v-1)).~~

~~"POS" means point of service.~~

"Pre-Hire Offer of Employment" means an offer of prospective employment to an individual by a child welfare agency or congregate care facility. The prospective employee must receive a complete child welfare agency/congregate care background check clearance prior to being eligible for an employment start date. Prospective employees shall not begin work while awaiting a background check clearance.

"Presumption of Unsuitability" means a licensee, applicant for licensure, or a member of the applicant's or licensee's household that has been:

indicated as a perpetrator of neglect and/or abuse that resulted in a 20- or 50-year retention; or

indicated as a perpetrator on two separate child protection investigations, each with 5-year retentions.

"Probationary day care employee" means a prospective employee or volunteer of a day care facility who:

Has been hired on a probationary basis; and

Has met the initial background check requirements as defined in this Part; and

Is awaiting full results of a comprehensive criminal background check.

Probationary day care employees or volunteers may not be left alone with children and must always be supervised by an individual who has received a full comprehensive criminal background check clearance within the past five years.

"Resource personnel" means physicians, nurses, psychologists, social workers, speech therapists, physical and occupational therapists, educators, and other technical and professional persons whose expertise is utilized in providing specialized services to children. Resource personnel who are not employed by a day care facility are not required to complete a comprehensive background check through the Department as they shall not be left alone with children.

386
387 "Replacement or supplemental staff" means any paid or unpaid individual who is
388 used to perform essential staff duties as evidenced by being counted in the staff-
389 child ratio or being allowed to be alone with children in a licensed child care
390 facility outside the visual or auditory supervision of child care facility staff.

391
392 ~~"SACWIS" means the Statewide Automated Child Welfare Information System~~
393 ~~operated by the Department, replacing CANTS.~~

394
395 ~~"Seasonal child care program" means a child care facility that operates a seasonal~~
396 ~~program that is subject to licensing by the Department.~~

397
398 "State Central Register" means a central register of all cases of suspected child
399 abuse or neglect reported and maintained by the Department under~~the child~~
400 ~~abuse and neglect data system maintained by the Department pursuant to~~ the
401 Abused and Neglected Child Reporting Act [325 ILCS 5/7.740].

402
403 "Supervising agency" means a licensed child welfare agency, ~~a licensed day care~~
404 ~~agency~~, a license-exempt agency, or the Department.

405
406 ~~"Work Study student" means a fulltime or parttime undergraduate, graduate or~~
407 ~~professional student participating in the Federal Work Study Program~~
408 ~~administered through their school's financial aid office.~~

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410 (Source: Amended at 50 Ill. Reg. _____, effective _____)

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412 SUBPART B: DAY CARE FACILITIES

413
414 **Section 385.30 Background Checks for Day Care Homes, Group Day Care Homes, and**
415 **Day Care Centers**~~Applicability of This Part~~

- 416
417 a) Individuals subject to a partial background check.
418
419 1) Household members in a day care home or group day care home ages 13
420 through 17 who are not employees or volunteers, even if these members of
421 the household are not usually present in the home during the hours the
422 child care facility is in operation.
423
424 2) Parent or guardian authorization is required for any individual under the
425 age of 18.
426
427 b) The components of a partial background check include:
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- 429 1) A search of the DCFS State Central Register (SCR) to determine whether
430 an individual is currently alleged or has been indicated as a perpetrator of
431 child abuse or neglect;
432
433 2) A search of the Illinois Sex Offender Registry (SOR) and in accordance
434 with the Adam Walsh Protection and Safety Act of 2006, the National Sex
435 Offender Public Website (NSOPW); and
436
437 3) A search of the following registries, repositories, or databases in the state
438 where the individual resided during the preceding five years:
439
440 A) State-based child abuse and neglect registry and/or database; and
441
442 B) State-based sex offender registry or repository.
443
444 c) Individuals subject to a comprehensive criminal background check.
445
446 1) All applicants of day care homes and group day care homes.
447
448 2) All operators of a day care center (director, assistant director, etc.).
449
450 3) All employees ages 18 years and older.
451
452 4) All volunteers ages 18 years and older.
453
454 5) All persons 14 through 17 years of age who are employed or serve as a
455 volunteer at a day care facility, with authorization from a parent or
456 guardian.
457
458 6) If the child care facility operates in a day care home or group day care
459 home, all members of the household ages 18 years and older, even if these
460 members of the household are not usually present in the home during the
461 hours the child care facility is in operation.
462
463 7) All replacement or supplemental staff (as defined in Section 385.20 of this
464 Part).
465
466 8) Any person who has access to children (as defined in Section 385.20 of
467 this Part), including:
468
469 A) Those under individual contract or working for a contracted
470 service provider that the child care facility has contracted with to
471 provide day-to-day operational services such as security, meal

- 472 service, housekeeping services, etc.
473
474 B) All interns.
475
476 d) Non-licensed service providers who, on a regular basis, provide care in the
477 provider's home to a child for whom the Department is legally responsible and all
478 members of their household age 13 or over are subject to background checks
479 described in this Section.
480
481 e) The components of a comprehensive criminal background check include:
482
483 1) In-state (Illinois) checks
484
485 A) Fingerprints submitted to the Illinois State Police (ISP) for
486 comparison to their criminal history records;
487
488 B) A search of the DCFS State Central Register (SCR) to determine
489 whether an individual is currently alleged or has been indicated as
490 a perpetrator of child abuse or neglect; and
491
492 C) A search of the Illinois Sex Offender Registry (SOR) and in
493 accordance with the Adam Walsh Protection and Safety Act of
494 2006, the National Sex Offender Public Website (NSOPW).
495
496 2) National checks
497
498 A) Fingerprints using Next Generation Identification submitted to the
499 Federal Bureau of Investigation (FBI) for comparison to their
500 national crime information databases.
501
502 B) A search of the National Crime Information Center National Sex
503 Offender Registry (NCIC/NSOR).
504
505 3) Interstate (out-of-state) checks
506 A search of the following registries, repositories, or databases in the state
507 where an individual resides, and each state where such person resided
508 during the preceding five years:
509
510 A) State-based criminal registry or repository, with the use of
511 fingerprints being required in the state where the staff member
512 resides, and optional in other states;
513
514 B) State-based child abuse and neglect registry and/or database; and

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C) State sex offender registry or repository.

- f) Frequency of background checks
The comprehensive criminal background check is to be completed at least every five years except for interstate checks. Background checks should meet a standard 45-day or less turnaround.
- a) ~~Applicability~~
~~All licensed child care facilities shall submit completed, signed authorizations for background checks for all persons subject to background checks as defined in Section 385.20.~~
- b) ~~License Renewals~~
~~A child care facility license shall not be renewed until the results of the background check, as defined in Section 385.20, have been received for the operator of the child care facility. However, if complete, signed authorizations have been submitted and fingerprints have been obtained for all persons subject to these background checks, renewal of the license shall not be delayed pending receipt of the results of the criminal background check for other persons subject to background checks.~~
- e) ~~Scope of Background Checks~~
 - 1) ~~All persons subject to background checks, as defined in Section 385.20, shall be processed in accordance with this Part. All persons age 18 and over shall submit to fingerprinting via the fingerprint vendor stipulated by the Department for a criminal history check. Fingerprints shall be submitted for the purpose of searching for criminal history through the Illinois and national fingerprint databases.~~
 - 2) ~~Foreign nationals shall submit to their prospective employer (if seeking employment) or licensing representative (if seeking a license to operate a child care facility) a copy of their valid passport and current visa. A copy of the valid passport and current visa shall be attached to the authorization for background check.~~
 - 3) ~~In addition, each owner of a for profit corporation, as a condition of license renewal, must certify under penalty of perjury that he or she is current or not more than 30 days delinquent in complying with a child support order. Failure to so certify may result in a denial of the license application, refusal to renew the license, or revocation of the license. [5 ILCS 100/10-65(c)]~~

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- 4) ~~Fingerprints for the following persons age 18 and over shall be submitted to the Federal Bureau of Investigation (FBI) for a search of its records for evidence of prior criminal activity:~~
 - A) ~~all applicants for foster family home licensure and members of the household;~~
 - B) ~~all relative caregivers and members of the household prior to a final placement decision in a relative home [20 ILCS 505/5(v-1)]; and~~
 - C) ~~a non-licensed service provider and all members of the non-licensed provider's household age 18 and older who have access to children as defined in Section 385.20;~~
- 5) ~~For prospective foster or adoptive parents or other adult living in the home who resided in another state in the preceding 5 years, the Department shall request a check of that other state's child abuse and neglect registry and the National Sex Offender Registry. [20 ILCS 505/5(v-2)]~~
- d) ~~A Condition of Employment~~

~~As a condition of employment in a licensed child care facility in a position that allows access to children, all persons subject to background checks, as defined in Section 385.20, shall complete and sign authorizations for background checks and submit to fingerprinting, when required. This applies to all current and conditional employees and volunteers subject to background checks, as defined in Section 385.20, and to any individual used as replacement or supplemental staff in the direct care and supervision of children.~~
- e) ~~Child Care Facilities and Non-Licensed Service Providers that Operate Within a Family Home~~

~~When a licensed child care facility or non-licensed service provider operates in a family home, adult members of the household age 18 and older shall be fingerprinted to be screened for prior criminal convictions and current pending criminal charges in accordance with the requirements of this Part. All household members age 13 and over shall be screened for a history of child abuse or neglect and for inclusion in the Illinois Sex Offender Registry. These background checks are required even if members of the household usually are not present in the home during the hours of operation.~~
- f) ~~Programs Operated Under the Auspices of Child Welfare or Day Care Agencies~~

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~~The background check requirements of this Part apply to:~~

- ~~1) employees of a child welfare agency who are involved in the placement in, licensure of, or supervision of foster family or adoptive homes, relative homes, group homes, child care institutions, youth emergency shelters, or independent living arrangements;~~
- ~~2) employees of a child welfare agency or day care agency who are involved in the licensure or supervision of licensed day care homes; and~~
- ~~3) persons used as replacement or supplemental staff identified in subsection (f)(1) or (2).~~

~~g) Service Providers
As a condition of a contract or agreement, or as otherwise required under 89 Ill. Adm. Code 357 (Purchase of Service), the Department will require a person who provides services that allow unsupervised access to children, including non-licensed service providers, to authorize a background check under this Part.~~

~~h) Issuance of Permits
A permit may be issued when:~~

- ~~1) the facility operator has cleared a full and complete background check as defined in Section 385.20;~~
- ~~2) if a for-profit corporation or other for-profit legal entity, the owner has certified that the owner is current or not more than 30 days delinquent in complying with a child support order;~~
- ~~3) all persons subject to background checks have been fingerprinted when required, as verified by a fingerprint receipt, and have obtained all required CANTS/SACWIS and Illinois and National Sex Offender Registry clearances; and~~
- ~~4) the facility is in compliance with all other applicable licensing requirements for issuance of a permit.~~

~~i) Work Study Students
No criminal history check is required unless work study students are used as replacement or supplemental staff, as defined in Section 385.20. However, CANTS/SACWIS and Illinois Sex Offender Registry checks must be completed for all work study students.~~

- 644 j) ~~Parental Involvement~~
645 ~~Parental involvement in a child care facility program does not require a~~
646 ~~background check. Nothing in this Part is intended to prohibit a parent from~~
647 ~~being left alone unsupervised with only their own children. When a required staff~~
648 ~~position is filled by a parent, the parent shall meet all standards that apply to an~~
649 ~~employed person in that position.~~
650
- 651 k) ~~Responsibility for Cooperation~~
652 ~~Child care facilities shall be responsible for ensuring that persons subject to~~
653 ~~criminal background checks make themselves available for fingerprinting when~~
654 ~~scheduled by the Department or its authorized representatives. Failure of a person~~
655 ~~subject to criminal background checks to appear for fingerprinting may result in~~
656 ~~the denial of a license application or refusal to renew or revocation of an existing~~
657 ~~license unless the child care facility can demonstrate that it took reasonable~~
658 ~~measures to insure cooperation with the fingerprinting process. Adequate cause~~
659 ~~for failure to appear for fingerprinting includes, but is not limited to:~~
660
- 661 1) ~~death in the family of the person;~~
662
- 663 2) ~~serious illness of the person or illness in the person's immediate family; or~~
664
- 665 3) ~~weather or transportation emergencies.~~
666
- 667 l) ~~Limitations on Criminal Offenders~~
668 ~~Persons age 18 and over who have been convicted of committing or attempting to~~
669 ~~commit the offenses in Section 385.60(a) or (b) (when applicable) and when the~~
670 ~~Department becomes aware of persons age 13 and over who have been tried as an~~
671 ~~adult and convicted for the crimes identified in Section 385.60(a) or (b) shall not:~~
672
- 673 1) ~~receive a license from the Department to operate a child care facility or~~
674 ~~have such a license renewed;~~
675
- 676 2) ~~be an employee, non licensed contractual provider, or volunteer at a child~~
677 ~~care facility licensed by the Department in a position which allows access~~
678 ~~to children;~~
679
- 680 3) ~~be a member of the household in a family home in which a child care~~
681 ~~facility operates; or~~
682
- 683 4) ~~obtain a contract or agreement from the Department to provide services~~
684 ~~which allow access to children if the requirement for such background~~
685 ~~checks is a condition of the contract or agreement.~~
686

687 ~~m) Limitations on Perpetrators of Child Abuse/Neglect~~
688 ~~Persons who have been indicated as the perpetrator of any of the child~~
689 ~~abuse/neglect allegations identified in Section 385.50(a) are presumed to be unfit~~
690 ~~for service that allows access to children. These indicated perpetrators are limited~~
691 ~~in the same manner as the criminal offenders in subsection (l) unless the Director~~
692 ~~or designee has waived in writing the presumption of unsuitability. These~~
693 ~~waivers may be requested in writing in accordance with Section 385.50(b). Prior~~
694 ~~to requesting a waiver, the Department or POS licensing staff must obtain written~~
695 ~~consents from the applicant/perpetrator to review the full child protection record.~~

697 ~~n) No Charge for Background Checks~~
698 ~~There is no charge to license applicants or licensed child care facilities for the~~
699 ~~background checks which are required by this Part.~~

700
701 (Source: Amended at 50 Ill. Reg. _____, effective _____)
702

703 **Section 385.31 Probationary Day Care Employees**

704
705 Both the Child Care Act of 1969 [225 ILCS 10] and the Child Care and Development Block
706 Grant Act of 2014 (CCDBG) (45 CFR 98.43) permit probationary employment at a day care
707 home, group day care home, or day care center. A probationary day care employee is defined in
708 Section 385.20 of this Part.

709
710 (Source: Added at 50 Ill. Reg. _____, effective _____)
711

712 **Section 385.32 Parental Involvement**

713
714 Parental involvement in a day care program does not require a background check. Nothing in
715 this Part is intended to prohibit a parent from being left alone unsupervised with only their own
716 children. When a required staff position is filled by a parent, the parent shall meet all standards
717 that apply to an employed person in that position.

718
719 (Source: Added at 50 Ill. Reg. _____, effective _____)
720

721 **Section 385.33 Non-Licensed Service Providers that Operate Within a Family Home**

722
723 When a non-licensed service provider operates in a family home, background checks must be
724 completed in accordance with Subpart B of this Part.

725
726 (Source: Added at 50 Ill. Reg. _____, effective _____)
727

728 **Section 385.34 Additional Restrictions for Day Care Facilities**

729

730 In addition to criminal background check restrictions listed in Appendix A of this Part, day care
731 home, group day care home, and day care center applicants/licensees, adult household members,
732 employees, and volunteers shall be ineligible for employment if such individual:

- 733
- 734 a) has been convicted of a felony consisting of:
- 735
- 736 1) child abuse or neglect;
- 737
- 738 2) a crime against children, including child pornography;
- 739
- 740 3) spousal abuse;
- 741
- 742 4) arson;
- 743
- 744 5) physical assault or battery; or
- 745
- 746 6) subject to a review process through which the Department may determine
747 that a child care staff member disqualified for a crime specified is eligible
748 for employment, a drug-related offense committed during the preceding
749 five years. (45 CFR 98.43)
- 750
- 751 b) has been convicted of a violent misdemeanor committed as an adult against a
752 child, including the following crimes: child abuse, child endangerment, sexual
753 assault, or of a misdemeanor involving child pornography. (45 CFR 98.43)
- 754

755 (Source: Added at 50 Ill. Reg. _____, effective _____)

756

757 SUBPART C: FOSTER FAMILY HOMES AND HOST HOMES

758

759 Section 385.35 Background Checks for Foster Family Homes and Host Homes

- 760
- 761 a) Individuals subject to a partial background check.
- 762
- 763 1) Household members in a foster family home or host home ages 13 through
764 17 who are not employees or volunteers, even if these members of the
765 household are not usually present in the home during the hours the child
766 care facility is in operation.
- 767
- 768 2) Parent or guardian authorization is required for any individual under the
769 age of 18.
- 770
- 771 b) The components of a partial background check include:
- 772

- 773 1) A search of the DCFS State Central Register (SCR) to determine whether
774 an individual is currently alleged or has been indicated as a perpetrator of
775 child abuse or neglect;
776
- 777 2) A search of the Illinois Sex Offender Registry (SOR) and in accordance
778 with the Adam Walsh Protection and Safety Act of 2006, the National Sex
779 Offender Public Website (NSOPW); and
780
- 781 3) A search of the following registries, repositories, or databases in the state
782 where the individual resided during the preceding five years:
783
- 784 A) State-based child abuse and neglect registry and/or database; and
785
- 786 B) State-based sex offender registry or repository.
787
- 788 c) Individuals subject to a Comprehensive Criminal Background Check include:
789
- 790 1) All applicants and members of the household of foster family homes and
791 host homes ages 18 years and older.
792
- 793 2) Individuals whose activities involve the care or supervision of children for
794 a foster family home or host home, or have unsupervised access to
795 children. This includes employees, volunteers, independent contractors,
796 people in the child care facility under contract, and interns.
797
- 798 d) The components of a comprehensive criminal background check include:
799
- 800 1) In-state (Illinois) checks
801
- 802 A) Fingerprints submitted to the Illinois State Police (ISP) for
803 comparison to their criminal history records;
804
- 805 B) A search of the DCFS State Central Register (SCR) to determine
806 whether an individual is currently alleged or has been indicated as
807 a perpetrator of child abuse or neglect; and
808
- 809 C) A search of the Illinois Sex Offender Registry (SOR) and in
810 accordance with the Adam Walsh Protection and Safety Act of
811 2006, the National Sex Offender Public Website (NSOPW).
812
- 813 2) National checks
814
- 815 A) Fingerprints using Next Generation Identification submitted to the

816 Federal Bureau of Investigation (FBI) for comparison to their
817 national crime information databases.

818
819 B) A search of the National Crime Information Center National Sex
820 Offender Registry (NCIC/NSOR).

821
822 3) Interstate (out-of-state) checks

823
824 A search of the following registries, repositories, or databases in the state
825 where an individual resides, and each state where such person resided
826 during the preceding five years:

827
828 A) State-based criminal registry or repository, with the use of
829 fingerprints being required in the state where the staff member
830 resides, and optional in other states;

831
832 B) State-based child abuse and neglect registry and/or database; and

833
834 C) State sex offender registry or repository.

835
836 (Source: Added at 50 Ill. Reg. _____, effective _____)

837
838 **Section 385.36 Placement Decisions in Foster Family Homes**

839
840 In addition to the non-waivable convictions listed in Appendix A of this Part, prior to final
841 approval for placement of a child, the Department shall conduct a criminal records background
842 check of the prospective foster or adoptive parent, including fingerprint-based checks of national
843 crime information databases. Final approval for placement shall not be granted if the record
844 check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime
845 against children (including child pornography), or for a crime involving violence, including
846 rape, sexual assault, or homicide, but not including other physical assault or battery, or if there
847 is a felony conviction for physical assault, battery, or a drug-related offense committed within
848 the past 5 years. [20 ILCS 505/5(v-1)]

849
850 (Source: Added at 50 Ill. Reg. _____, effective _____)

851
852 **SUBPART D: CHILD WELFARE AGENCIES AND CONGREGATE CARE FACILITIES**

853
854 **Section 385.37 Background Checks for Child Welfare Agencies and Congregate Care**
855 **Facilities**

856
857 a) Persons subject to a child welfare agency or congregate care criminal background
858 check via fingerprints:

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- 1) The operator of a congregate care facility;
 - 2) All adults employed at a child welfare agency or congregate care facility regardless of whether they have contact with children;
 - 3) All volunteers;
 - 4) All replacement or supplemental staff (as defined in Section 385.20 of this Part); and
 - 5) Any person who has access to children (as defined in Section 385.20 of this Part), including:
 - A) Those under individual contract or working for a contracted service provider that the child care facility has contracted with to provide day-to-day operational services such as security, meal service, housekeeping services, etc.
 - B) All interns.
- b) The components of a Child Welfare Agency and Congregate Care Facility comprehensive criminal background check include:
- 1) Fingerprints submitted to the Illinois State Police (ISP) for comparison to their criminal history records;
 - 2) Fingerprints submitted to the Federal Bureau of Investigation (FBI) for comparison to their national crime information databases;
 - 3) A search of the DCFS State Central Register (SCR) to determine whether an individual is currently alleged, or has been indicated as a perpetrator of child abuse and/or neglect;
 - 4) A search of the child abuse and neglect registry, repository, or database in the state where the individual resided during the preceding five years; and
 - 5) A search of the Illinois Sex Offender Registry (SOR) and in accordance with the Adam Walsh Protection and Safety Act of 2006, the National Sex Offender Public Website (NSOPW).

900 (Source: Added at 50 Ill. Reg. _____, effective _____)
901

902 **Section 385.38 Pre-Hire Offer of Employment for Child Welfare Agencies and Congregate**
903 **Care Facilities**

904
905 Individuals who have authorized the background check may receive a pre-hire offer of
906 employment by a child welfare agency or congregate care facility pending the outcome of the
907 required background check. All potential employees shall not receive a start date or begin
908 employment until the employer receives the full child welfare agency/congregate care
909 background check clearance, as defined in Section 385.20 of this Part. The form authorizing such
910 a background check shall be submitted to the Department.

911
912 (Source: Added at 50 Ill. Reg. _____, effective _____)

913
914 **SUBPART E: AUTHORIZATION AND RESULTS OF BACKGROUND CHECK**

915
916 **Section 385.40 Authorization for Background Checks**

917
918 a) Persons Required to Authorize Background Checks

919
920 1) All persons subject to background checks as described in Section
921 385.30(a), Section 385.35(a), and Section 385.37(a) of this Part~~providers~~
922 (including, but not limited to, prospective employees, non-licensed service
923 providers, contractors, child care staff, interns, and volunteers) are
924 required to authorize background checks (as defined in Section 385.20)
925 and shall authorize those checks as a condition of employment.
926 ~~Documentation shall be provided at the time of initial application for~~
927 ~~licensure and at the time of license renewal.~~

928
929 2) Each license applicant must certify on the application form, under penalty
930 of perjury, that they are not more than 30 days delinquent in complying
931 with a child support order. Failure to so certify may result in a denial of
932 the license application, refusal to renew the license, or revocation of the
933 license. [5 ILCS 100/10-65(c)]~~Each owner of a child care facility must~~
934 ~~certify, under penalty of perjury on forms prescribed by the Department,~~
935 ~~that he or she is current or not more than 30 days delinquent in complying~~
936 ~~with a child support order. Failure to so certify may result in a denial of~~
937 ~~the license application, refusal to renew the license, or revocation of the~~
938 ~~license. (Section 10-65(c) of the Illinois Administrative Procedure Act [5~~
939 ~~ILCS 100/10-65(c)])~~

940
941 b) Contents of Authorization

942 The authorization required by this Section shall be on forms prescribed by the
943 Department and shall include:
944

- 945 1) identifying information including, but not limited to: ~~consisting of~~ name,
946 address, Social Security number or Individual Taxpayer ID Number
947 (ITIN), date of birth, height, weight, hair and eye color, previous names
948 and addresses;
- 949
- 950 2) a certification that all information provided on the form is true and
951 accurate including ~~under penalty of perjury~~ identifying any prior criminal
952 convictions other than a minor traffic violation, as defined by this Part,
953 ~~and of any pending criminal charges;~~
- 954
- 955 3) an acknowledgement that falsification of any information provided on the
956 authorization, or the results of the background check may be full and
957 sufficient grounds to deny an application for licensure;
- 958
- 959 ~~43)~~ authorization for the Department to release the results of the background
960 check to the governing body or employer or, in the case of a group home
961 or a child care facility operating in a family home, to the supervising
962 agency for the child care facility; and
- 963
- 964 54) a disclaimer that the individual signing the authorization for background
965 check has a right to make a written request for, and to receive a copy of,
966 the background check results.
- 967

968 c) Employees Absent from Active Duty
969 For purposes of this Part only, employees who have been separated from a child
970 care facility licensed by the Department for six months or longer (for reasons
971 other than vacation, sabbatical leave, sick leave or maternity leave) shall no
972 longer be considered current employees. Upon their return to active duty, the
973 individuals shall be required to again authorize a background check pursuant to
974 this Part.

975

976 d) Employee Transfers Between Licensed Child Care Facilities
977 A child care facility that hires an employee who has cleared a comprehensive ~~full~~
978 ~~and complete~~ background check, as defined in Section 385.20, at another child
979 care ~~a~~ facility licensed by the Department shall submit a request for a transfer on a
980 form prescribed by the Department along with a new signed authorization ~~for~~
981 background check form for the new employee. An employee who has cleared a
982 comprehensive criminal background check within the previous five years ~~as~~
983 ~~described in this subsection~~ does not need to be fingerprinted again and is not
984 required to have another background check unless the Department specifically
985 makes such requests ~~new prints~~.

986

987 e) Foreign Nationals

988 Foreign nationals shall submit to their prospective employer (if seeking
989 employment) or licensing representative (if seeking a license to operate a child
990 care facility) a copy of their valid passport and current visa. A copy of the valid
991 passport and current visa shall be attached to the authorization for background
992 check. ~~Operation of Seasonal Programs~~

993 ~~A check of the CANTS/SACWIS, the Illinois and National Sex Offender~~
994 ~~Registries must be completed when child care facilities hire staff to operate~~
995 ~~seasonal programs and discharge or lay off the staff until the beginning of the next~~
996 ~~season, when the time period between the end of one seasonal program and the~~
997 ~~beginning of the next program is more than six months before the individual~~
998 ~~begins his or her duties for the next season.~~

1000 f) Commingling Not Permitted

1001 If a child care facility operates within the same building as other agencies or
1002 organizations or is part of a multi-function agency that offers services which are
1003 not subject to Department licensing, the child care facility shall develop a plan to
1004 limit access to children ~~present~~~~receiving care~~ in the licensed child care facility by
1005 individuals who are not subject to the background check requirements of this Part.
1006 The plan shall be approved in writing by the governing body and the Department.

1008 g) Responsibility for Cooperation

1009 Child care facilities shall be responsible for ensuring that persons subject to
1010 criminal background checks make themselves available for fingerprinting as
1011 required. Failure of a person subject to criminal background checks to appear for
1012 fingerprinting may result in the denial of a license application or refusal to renew
1013 or revocation of an existing license. Adequate cause for failure to appear for
1014 fingerprinting includes, but is not limited to:

- 1015 1) death in the family of the person;
- 1016 2) serious illness of the person or illness in the person's immediate family; or
- 1017 3) weather or transportation emergencies.

1022 ~~Conditional Employment~~

1023 ~~Individuals hired to begin employment who have authorized the background~~
1024 ~~check required by this Part may be employed by a child care facility on a~~
1025 ~~conditional basis pending the outcome of the required background check. The~~
1026 ~~form authorizing such a background check shall be submitted to the Department.~~

1028 h) Persons not required to authorize a background check. In all instances the
1029 following persons may not be left alone with children in a child care facility, other
1030 than their own child:

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- 1) Persons engaged in parental involvement activities.
- 2) Visitors who lead a special event such as reading to children, providing instruction such as art activities, conducting a health or safety demonstration, etc.
- 3) Qualified professional resource personnel who are employed by an outside entity and deliver individualized services to children on site at a child care facility. This includes, but is not limited to, licensed service providers who travel to child care facilities to deliver early intervention services, and related service providers from the local education agency or school district.
- 4) Students engaged in a practicum or classroom observation, or similar activities as a condition of meeting academic course requirements.
~~Limitations on the Use of Conditional Employees
Conditional employees shall not be left alone with children outside the visual and auditory supervision of staff until they have cleared all required background checks.~~

(Source: Amended at 50 Ill. Reg. _____, effective _____)

Section 385.50 Child Abuse or Child Neglect

- a) ~~An individual who is a household member and identified as a perpetrator of child abuse/neglect in a single child protection investigation that does not rise to the level of a presumption of unsuitability can be assessed and recommended for waiver at the supervisory level. An individual who is a household member and identified as a perpetrator of child abuse/neglect in child protection reports that create a presumption of unsuitability (a single indicated report resulting in 20 or 50 year retention or two indicated reports each with a five year retention period) shall require a waiver through the Director or designee in order to be cleared.~~
- ab) Assessment of Indicated Child Abuse and Neglect Reports
 - 1) All background check results with an~~A household member, employee, applicant for employment, volunteer or non-licensed contractual provider~~ indicated finding as a perpetrator in a child protection investigation that does not rise to the level of a presumption of unsuitability shall be assessed in order to determine a recommendation to grant or deny a waiver for licensure or employment.

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2) The Department or contributing agency licensing staff shall obtain written consent from the individual who is the subject of the indicated report in order to review pertinent child protection records.~~The assessment shall include the Department or POS licensing staff obtaining a written consent and reviewing the child protection records, as well as the following details:~~

3) An assessment of the indicated finding of child abuse or child neglect shall include the following:

- A) the nature of the abuse or neglect with which the individual was identified, including whether the abuse or neglect resulted in serious injury or death to a child or children;
- B) the circumstances surrounding the commission of the abuse or neglect, including the age of the perpetrator and the children, that would demonstrate unlikelihood of repetition;
- C) the amount of time that has elapsed since the abuse or neglect occurred and whether prior incidents of child abuse or child neglect have been indicated against the individual;
- D) whether the abuse or neglect involved single or multiple child victims;
- E) the relationship of the incident of child abuse or neglect to the individual's ~~current or conditional~~ job responsibilities within the child care facility;
- F) whether the individual has been convicted of a criminal offense which might have bearing on the individual's ability to function in a child care facility as licensee or employee;
- G) evidence of rehabilitation such as employment, education, participation in therapy since the indicated incident of abuse or neglect; and
- H) three positive character references.

b) Presumption of Unsuitability

1) An individual who is a household member and identified as a perpetrator

1117 of child abuse/neglect in child protection reports that create a presumption
1118 of unsuitability (a single indicated report resulting in 20 or 50 year
1119 retention or two indicated reports each with a five year retention period)
1120 shall require a waiver through the Director or designee in order to be
1121 cleared.

1122
1123 A) Requests for a waiver of presumption of unsuitability shall be in
1124 writing and postmarked within 30 days after notice is received by
1125 the licensing entity or employer.

1126
1127 B) The Department or contributing agency licensing staff shall obtain
1128 written consent from the individual who is the subject of the
1129 indicated report in order to review pertinent child protection
1130 records.

1131
1132 C) The Director of the Department or the Director's designee shall
1133 review any materials submitted on the individual's behalf and may
1134 waive the presumption that the individual is unsuitable for
1135 licensure or employment.

1136
1137 D) When the Director or designee determines there is good cause for
1138 waiving the presumption of unsuitability, the hiring or licensing
1139 decision shall be made in accordance with the totality of the
1140 requirements of this Part and the applicable licensing standards.

1141
1142 2) An individual who is identified as a perpetrator of child abuse or neglect
1143 in a single child protection investigation that does not rise to the level of a
1144 presumption of unsuitability can be assessed and recommended for waiver
1145 at the supervisory level.

1146
1147 ~~A2)~~ When a household member, employee, applicant for employment,
1148 volunteer or non-licensed contractual provider has been indicated
1149 as a perpetrator in a child protection investigation that equates to a
1150 presumption of unsuitability, the licensing entity or employer may
1151 request a review of the denial and request a waiver of the
1152 presumption of unsuitability.

1153
1154 B) Requests for a waiver of presumption of unsuitability shall be in
1155 writing and postmarked within 30 days after notice is received by
1156 the licensing entity or employer.

1157
1158 C) The Department or contributing agency ~~Purchase of Service~~
1159 ~~Agency~~ shall obtain written consent from the individual who is the

1160 subject of the indicated report in order to review the child
1161 protection reports that led to the indicated findings that equate to a
1162 presumption of unsuitability, before making a decision in
1163 requesting a waiver for a presumption of unsuitability.
1164

1165 3) ~~The Director of the Department or the Director's designee shall review any~~
1166 ~~materials submitted on the individual's behalf and may waive the~~
1167 ~~presumption that the individual is unsuitable for licensure or employment.~~
1168 ~~When the Director or designee determines there is good cause for waiving~~
1169 ~~the presumption of unsuitability, the hiring or licensing decision shall be~~
1170 ~~made in accordance with the totality of the requirements of this Part and~~
1171 ~~the applicable licensing standards.~~
1172

1173 c) Notification of Hiring Decision
1174 A child care facility shall notify the Department in writing of its decision
1175 regarding the employment of a person, or retention of an employee, who has been
1176 indicated as a perpetrator of child abuse/neglect. The decision of the employer is
1177 final. Employment decisions may not be appealed to the Department.
1178

1179 (Source: Amended at 50 Ill. Reg. _____, effective _____)
1180

1181 **Section 385.60 Criminal Convictions and Pending Criminal Charges**
1182

1183 a) Non-Waivable Convictions that are Bars to Licensure/Employment
1184

1185 1) Persons convicted of crimes or convicted of attempting to commit crimes
1186 identified as lifetime (non-waivable) bars in Appendix A of this
1187 Part~~Section 4.2(b) of the Child Care Act~~ shall not:
1188

1189 A) receive a license from the Department to operate a child care
1190 facility or have such a license renewed;~~gain employment in a~~
1191 ~~licensed child care facility.~~
1192

1193 B) be an employee, non-licensed contractual provider, intern, or
1194 volunteer at a congregate care child care facility licensed by the
1195 Department;
1196

1197 C) be an employee, non-licensed contractual provider, intern, or
1198 volunteer at a day care home, group day care home, day care
1199 center, foster family home, or host home; or
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1201 D) be a member of the household in a day care home, group day care
1202 home, foster family home, or host home.

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2) When a licensee is convicted of crimes that are non-waivable bars to licensure, or convicted of attempting to commit these crimes, action shall be taken by the supervising licensing entity:

- A) to begin the revocation process or the process to refuse to renew the license; or
- B) to refuse to issue a full license, subsequent to a permit.

~~3) When an employee in a licensed child care facility is convicted of non-waivable bars to employment or is convicted of attempting to commit one of these crimes, the facility can no longer employ that person and remain in compliance with the Child Care Act. This includes persons who have been:~~

- ~~A) declared a sexually dangerous person under the Sexually Dangerous Persons Act [725 ILCS 205] or identified as a sex offender in the Illinois Sex Offender Registry operated by the Illinois State Police;~~
- ~~B) convicted of committing or attempting to commit any of the offenses specified in this Part that are defined by the Criminal Code of 2012 [720 ILCS 5] or any earlier Illinois criminal law or code (see Section 4.2 of the Child Care Act); or~~
- ~~C) convicted of committing or attempting to commit an offense in another state, the elements of which are similar to, and bear a substantial relationship to, any of the criminal offenses specified in Section 4.2(b) of the Child Care Act.~~

b) Special Provisions for Foster Family Homes and Host Homes
In addition to the provisions set forth in subsection (a) of this Section, no applicant may be licensed by the Department to operate a foster family home or host home, and no person may reside in a foster family home or host home licensed by the Department, who has been convicted of committing or attempting to commit any of the offenses listed in Appendix A, Waivable Bars (Not Including Foster Homes and Host Homes) or the offenses listed in Section 385.36 of this Part ~~4.2 of the Child Care Act, and Section 5(v-1) of the Children and Family Services Act [20 ILCS 505], or who is included in the Illinois or National Sex Offender Registry (unless the offender is a ward of the State of Illinois placed in the foster home by the Department or its contractual agent).~~

1246 c) Special Provisions for Day Care Homes, Group Day Care Homes, and Day Care
1247 Centers

1248 In additions to the provisions set forth in subsection (a) of this Section, no
1249 applicant may be licensed by the Department to operate a day care home, group
1250 day care home, or day care center, and no person may reside in a day care home
1251 or group day care home licensed by the Department who has been convicted of
1252 the offenses listed in Section 385.34 of this Part.

1253
1254 d) For offenses listed in Appendix A of this Part as Waivable Bars (Not Including
1255 Foster Homes) the Department may make an exception and, for child care
1256 facilities other than foster family homes or host homes, issue a new child care
1257 facility license to or renew the existing child care facility license of an applicant,
1258 a person employed by a child care facility, or an applicant who has an adult
1259 residing in a home child care facility, provided that all of the following
1260 requirements are met:

1261
1262 1) The relevant offense occurred more than 5 years prior to the date of
1263 application or renewal, except for drug offenses. The relevant drug
1264 offense must have occurred more than 10 years prior to the date of the
1265 application or renewal, unless the applicant passed a drug test, arranged
1266 and paid for by the child care facility, no less than 5 years after the
1267 offense.

1268
1269 2) The Department must conduct a background check and assess all
1270 convictions and recommendations of the child care facility to determine if
1271 hiring or licensing the applicant is in accordance with Department
1272 administrative rules and procedures.

1273
1274 3) The applicant meets all other requirements and qualifications for
1275 licensure. [225 ILCS 10/4.2(b-2)]

1276
1277 e) The Department may make an exception and issue a new foster family home or
1278 host home license or may renew an existing foster family home or host home
1279 license of an applicant who was convicted of an offense described in Appendix A
1280 of this Part in the section titled Additional Foster Home or Host Home
1281 Restrictions, provided all of the following requirements are met:

1282
1283 1) The relevant criminal offense or offenses occurred more than 10 years
1284 prior to the date of application or renewal.

1285
1286 2) The applicant had previously disclosed the conviction or convictions to the
1287 Department for purposes of a background check.
1288

- 1289 3) After the disclosure, the Department either placed a child in the home or
1290 the foster family home license was issued.
1291
1292 4) During the background check, the Department had assessed and waived
1293 the conviction in compliance with the existing statutes and rules in effect
1294 at the time of the hire or licensure.
1295
1296 5) The applicant meets all other requirements and qualifications to be
1297 licensed as a foster family home or host home under the Child Care Act of
1298 1969 and the Department's administrative rules.
1299
1300 6) The applicant has a history of providing a safe, stable home environment
1301 and appears able to continue to provide a safe, stable home environment.
1302 [225 ILCS 10/4.2(d)]
1303

1304 fe) Assessment of Criminal Convictions Other than Non-Waivable Convictions that
1305 are Bars to Licensure

1306 Except as specified in subsections (a) and (b), an individual convicted of a crime
1307 will not automatically be prohibited from licensure, renewal of a license, or
1308 employment in a child care facility, from residing in a family home in which a
1309 child care facility operates. ~~The following shall be considered:~~

- 1310 1) The Department or contributing agency licensing staff shall obtain written
1311 consent from the individual who is the subject of the criminal conviction
1312 in order to review pertinent criminal records.
1313
1314 2) An assessment of each criminal conviction shall include the following:
1315
1316 A) the age of the individual when the offense was committed;
1317
1318 B) the circumstances surrounding the offense;
1319
1320 C) the specific duties and responsibilities necessarily related to the
1321 license being applied for, and the bearing, if any, that the
1322 individual's conviction history may have on their fitness to perform
1323 these duties and responsibilities;
1324
1325 D) the individual's employment references;
1326
1327 E) the individual's character references and any certificates of
1328 achievement;
1329
1330 F) an academic transcript showing the educational achievement since
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the disqualifying conviction;

G) a Certificate of Relief from Disabilities or Certificate of Good Conduct; and

H) anything else that speaks to the individual's character. [225 ILCS 10/4.2(e)]

- ~~1) the nature of the crime for which the individual was convicted;~~
- ~~2) the circumstances surrounding the commission of the crime, including the age of the individual, that would demonstrate a low likelihood of repetition;~~
- ~~3) the period of time that has elapsed since the crime was committed;~~
- ~~4) the number of crimes for which the individual was convicted;~~
- ~~5) evidence of rehabilitation such as successful participation in therapy since conviction;~~
- ~~6) commutation of the sentence by the Governor or granting of a pardon;~~
- ~~7) overturn of the conviction upon appeal;~~
- ~~8) three character references;~~
- ~~9) the relationship of the crime to the capacity to care for children or to have access to children cared for in a child care facility;~~
- ~~10) whether the employee/foster parent disclosed a criminal background and the circumstances of the conviction and, if not, why; and~~
- ~~11) the development of a supervisory or monitoring plan that the Department has approved.~~

gd) Assessment of Pending Criminal Charges

- 1) When an employer receives notice that an employee has a pending charge for a crime identified as a lifetime (non-waivable) bar in Appendix A of this Part, or a pending charge for any crimes identified in Section 385.34 or Section 385.36 of this Part~~listed as a barring offense~~, the employer shall immediately inform the employee and take action to develop a protective

1375 plan to ensure the employee does not have unsupervised access to
1376 children. The employer shall request a written consent from the employee
1377 to allow the employer to have full access to current pending charges. The
1378 employee shall have the responsibility to request a certified final~~gain~~
1379 disposition on pending charges that would be a bar, if convicted, before a
1380 decision is made related to employment.

1381
1382 2) When the supervising agency of a licensed child care facility receives
1383 notice that a licensee or household member has a pending charge for a
1384 crime listed as a barring offense, the supervising agency shall take steps
1385 necessary to develop a protective plan to ensure the safety, health and
1386 welfare of children served. The licensee shall be responsible to request a
1387 certified final~~see~~ disposition ~~is received~~ on pending charges that would be
1388 a bar to licensure, if convicted.

1389
1390 3) For pending charges that are identified as waivable in Appendix A of this
1391 Part,~~not bars to employment or licensure~~, the following areas shall be
1392 assessed to determine~~in determining~~ whether a final disposition of the
1393 pending charge is needed, before action is taken on employment or a
1394 license:

1395
1396 A) the seriousness and nature of the charges that are pending,
1397 including a determination of whether the charges are among those
1398 listed in Section 4.2(b), (b-1), (b-1.5), or (c) of the Child Care Act
1399 that serve as a bar to licensure or employment in a position that
1400 allows access to children;

1401
1402 B) the circumstances surrounding the incident that led to the criminal
1403 charge;

1404
1405 C) the relationship of the charges to the ability to care for children or
1406 to have access to children and confidential information in a child
1407 care facility;

1408
1409 D) whether the individual has ever been convicted of or charged with
1410 crimes of a similar nature; and

1411
1412 E) three positive character references and other information submitted
1413 by or on behalf of the appellant or any other person, especially
1414 about the suitability of the individual to care for children.

1415
1416 he) Notification of Hiring Decision
1417 A child care facility shall notify the Department in writing of its decision to

1418 employ a person, or retain an employee, with a criminal history. The decision of
1419 the employer is final. Employment decisions may not be appealed to the
1420 Department.
1421

1422 (Source: Amended at 50 Ill. Reg. _____, effective _____)
1423

1424 **Section 385.70 Disposition of Background Checks**
1425

1426 a) Persons subject to background checks shall be ineligible for licensure,
1427 employment or volunteer service, or be a member of a household if such
1428 individuals:
1429

1430 1) Refuse to consent to a background check, as defined in Section 385.20 of
1431 this part;
1432

1433 2) Knowingly make a materially false statement in connection with such
1434 background check;
1435

1436 3) Are registered, or is required to be registered, on a state sex offender
1437 registry or repository or the National Sex Offender Registry;
1438

1439 4) Have committed disqualifying offenses, as listed in Appendix A (Lifetime
1440 Bars) of this Part. In addition to those disqualifying offenses:
1441

1442 A) For day care homes, group day care comes, and day care centers,
1443 have committed a disqualifying offense as listed in Section 385.34
1444 of this Part.
1445

1446 B) For foster family homes and host homes, have committed a
1447 disqualifying offense as listed in Section 385.36 of this Part; or
1448

1449 5) Have been indicated in a child abuse or neglect investigation that equates
1450 to a presumption of unsuitability and no waiver of the presumption is
1451 granted.
1452

1453 **ba)** Notice of Findings

1454 When the subject of the background check is the director, administrator or other
1455 chief executive officer of the child care facility, the Department will notify in
1456 writing the presiding officer of the governing body of the results of the check, and
1457 the presiding officer shall take those actions required by this Part. In the case of a
1458 group home or a child care facility that operates in a family home, the Department
1459 will notify in writing the supervising agency for the child care facility of the
1460 results of the check.

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cb) Child Care Facility Decision Regarding Employment
It shall be the responsibility of the governing body or operator of a child welfare agency or congregate care~~the~~ facility to determine whether to hire an individual with a pre-hire offer of employment, or for the governing body or operator of a day care facility to continue employment of a probationary day care employee after the receipt of all components of a background check,~~or continue the employment of a conditional employee or to reassign the individual in question to a position that does not allow access to children,~~ to provide the individual an opportunity for a review in accordance with the child care facility's personnel policies, and to notify the Department in writing of its employment decision within 30 days after receipt of the information from the Department. The decision of the employer is final, subject to review under the personnel policies of its governing body. These hiring decisions may not be appealed to the Department.

de) Request for Subsequent Background Check
The employer of a person who has been relieved of child-related duties pursuant to this Part may request another background check if the circumstances leading to the relieving of child care duties have changed. A change of circumstances may include, but is not limited to:

- 1) pending criminal charges have been dismissed or have resulted in an acquittal or conviction for a lesser charge;
- 2) a conviction is reversed on appeal;
- 3) the indicated finding of abuse or neglect is expunged, amended to another allegation, or amended to "unfounded";
- 4) a pending child protection investigation of abuse or neglect is "unfounded"; or
- 5) the records of the circuit court or local or State Police, if relied upon to reach the decision, have been amended.

ed) Delinquent Child Support
For all child care facility types, if~~if~~ a license applicant has been denied, or the Department has refused to renew, a license because the applicant is more than 30 days delinquent in complying with a child support order, the applicant may reapply after submitting proof that the child support has been paid in full or that a payment schedule has been arranged with the Department of Healthcare and Family Services (Title IV-D support cases) or the court of jurisdiction (all other child support cases).

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(Source: Amended at 50 Ill. Reg. _____, effective _____)

Section 385.80 Appeal of Decision to Deny License or Permit Based on Background Check Information

- a) Notice of Decision to Deny Licensure Based Upon Background History
 - 1) When an application for licensure is denied due to criminal background history or identification as an indicated perpetrator of abuse/neglect, the supervising agency shall send notice to the applicants for licensure of the denial, including the reason for denial. The initial notice of denial shall provide the applicant the opportunity to request a review of the decision by Central Office of Licensing [Background](#) Review Committee. When there is a request for a review of the decision, the Central Office shall send a notice of decision that the request was granted or denied. When the request for review of the decision is denied, the notice shall provide an opportunity for the applicant to appeal the decision to the DCFS Administrative Hearings Unit for its review and determination.
 - 2) When there is no request for a review of the decision by the Central Office of Licensing [Background](#) Review Committee, the assigned licensing unit shall send a second and final notice of denial, which provides an opportunity for the applicant to appeal to the Administrative Hearings Unit for review and determination.
- b) What May Be Appealed Under This Part
A license applicant may appeal:
 - 1) the denial of an initial license based upon a background check conducted in accordance with this Part; or
 - 2) the denial of a permit based upon a background check conducted in accordance with this Part.
- c) What May Not Be Appealed Under This Part
The DCFS Chief Administrative Law Judge will decide whether an issue is appropriate for a fair hearing under subsection (b). Issues inappropriate for a fair hearing under this Part include, but are not limited to:
 - 1) a decision based upon a background check conducted pursuant to this Part that revealed that the license applicant has a criminal conviction that bars licensure or employment or residence in a licensed child care facility

1547 pursuant to Section 4(a) and (b) of the Child Care Act, unless the licensing
1548 applicant can establish that an exception, as provided in Section 4(b)(2) of
1549 the Act, may exist (see Appendix A); or

1550
1551 2) a decision based upon a background check conducted pursuant to this Part
1552 that revealed that the license applicant has a criminal conviction that bars
1553 licensure of or residence in a foster family home or host home pursuant to
1554 Section 4(c) of the Child Care Act, unless the licensing applicant can
1555 establish that an exception, as provided in Section 4(d) of the Act, may
1556 exist.

1557
1558 d) Appeal Request

1559
1560 1) An individual requesting an opportunity for an appeal pursuant to
1561 subsection (b) shall submit the request, in writing, to the:

1562
1563 Administrative Hearings Unit
1564 Department of Children and Family Services
1565 406 E. Monroe St., Station #15
1566 Springfield, Illinois 62701

1567
1568 2) All such requests must be postmarked within 10 days after the date of
1569 written notice of the denial of an application for license or permit.

1570
1571 e) Review of File

1572
1573 1) After the Administrative Hearings Unit has received the individual's
1574 request for an appeal, the Administrator of the Unit shall notify the
1575 Department that the individual has filed an appeal and the Department will
1576 send to the Administrator a copy of the notice of denial of the application
1577 for a license or permit. The notice of denial shall be prima facie evidence
1578 that the Department had a basis for refusing to issue the license or permit.

1579
1580 2) The Administrator shall ask both the Department and the individual to
1581 submit any documents, records, statements, or other materials pertinent to
1582 the Department's denial of the application for licensure to create an appeal
1583 file. The Administrator shall further advise the Department and the
1584 individual of the intent to examine the appeal file, including all materials
1585 submitted for the appeal file, to determine whether a genuine issue of
1586 material fact exists. Within 10 business days after the date of the
1587 Administrator's request for materials, both the Department representative
1588 and the individual shall submit to the Administrative Hearings Unit any
1589 and all documents, records, statements, materials, or evidence to establish

1590 that the Department's decision to deny the license because of the
1591 background check was either correct or incorrect.

1592
1593 3) At least 10 business days after the Administrator's request for materials,
1594 the Administrator shall examine the entire appeal file, including all
1595 materials submitted by both parties, and shall determine if a genuine issue
1596 of material fact exists.

1597
1598 4) If the Administrator determines that no genuine issue of material fact
1599 exists, the Administrator shall dismiss the appeal. The letter dismissing
1600 the appeal shall be the final administrative decision of the Department.

1601
1602 f) The Appeal Process

1603 The individual shall be notified, in writing, of the date, time and location of the
1604 appeal hearing. The individual may be represented by counsel and may present
1605 evidence and/or witnesses. The individual shall be required to produce evidence
1606 that the person identified in the background report is not the individual in question
1607 or that the background check report is inaccurate. If the issue is delinquency in
1608 the payment of child support, the individual shall provide evidence that the child
1609 support has been paid in full or that a payment schedule has been arranged with
1610 the Department of Healthcare and Family Services (Title IV-D cases) or a court of
1611 jurisdiction (all other child support cases). Evidence to be considered shall be
1612 limited to:

1613
1614 1) When the appeal involves an indicated child abuse or
1615 neglect~~CANTS/SACWIS~~ report, written statements from the administrator
1616 of the child protection division for the Department that the individual
1617 named in the report is not the individual in question or that the record has
1618 been expunged or amended; or

1619
1620 2) When the appeal involves a criminal history record, evidence shall be
1621 limited to written statements from a law enforcement agency or clerk of
1622 the court: that the subject of the criminal history record provided to the
1623 Department is not the individual in question, was never convicted of the
1624 crimes as alleged in the criminal history record, or was granted a full
1625 pardon by the Governor indicating that the person did not commit the
1626 crime; the crime was amended or expunged; or the information in the
1627 criminal history record concerning the existence of the conviction was
1628 erroneous; or

1629
1630 3) When the appeal involves delinquent child support, written statements
1631 from the Department of Healthcare and Family Services or the clerk of the
1632 court, as applicable, that child support has been paid in full or a payment

schedule arranged or that the payment record was incorrect.

- g) Final Administrative Decision
In order to reverse a decision by the Department, the administrative law judge conducting the appeal must conclude that, when all the evidence presented pursuant to this Part and the applicable licensing standards are considered, there is clear and convincing evidence that the individual is not the person named in the indicated report/criminal history record or that the individual is suitable for service that allows access to children. If the appeal is addressing the issue of delinquent child support, the individual must submit proof that the record was in error or that he or she has paid the delinquency or made arrangements for payment of delinquent child support. The final administrative decision is made by the Director after reviewing the recommendation by the administrative law judge ~~and~~, subject to review by a court of competent jurisdiction.
- h) Record of Appeal
 A written record shall be made of any reviews conducted pursuant to this Section, and that record shall contain copies of all documents relied upon in making the determination of fitness or unfitness for licensure.

(Source: Amended at 50 Ill. Reg. _____, effective _____)

SUBPART F: RECORDS MAINTENANCE AND CONFIDENTIALITY

Section 385.90 Records to be Maintained by the Child Care Facility

- a) The governing body or operator of a child care facility shall maintain a copy of the authorization for background check form ~~checks~~ required by Sections 385.40 ~~for all persons subject to a background check and 385.50 as part of the personnel records of the facility for a period of five years from the date of termination of the employment of the employee.~~
 - 1) All qualifying results of the background checks shall be on file at the child care facility as part of the personnel records.
 - 2) The authorization for background check forms, and the results of the background checks shall be maintained as part of the personnel records of the child care facility for a period of five years from the date of termination of the employment of the employee.
- b) The background check record of any conclusions or recommendations resulting from the review of the findings of that check by the governing body or operator of the child care facility shall be maintained for five years after termination of the

1676 employment in a separate, confidential file apart from other personnel records.
1677 Access to those records shall be permitted for the following:

- 1678
- 1679 1) the subject of an individual record;
- 1680
- 1681 2) the governing body or operator of the child care facility;
- 1682
- 1683 3) Department licensing staff;
- 1684
- 1685 4) Department staff authorized, in writing, by the Director to conduct
- 1686 background checks pursuant to this Part;
- 1687
- 1688 5) persons who are authorized, in writing, by the governing body or operator
- 1689 of the child care facility and whose duties are related to the background
- 1690 checks or its findings;
- 1691
- 1692 6) Department representatives who have the Director's written authorization
- 1693 specifying the statutory authority or administrative rules under which the
- 1694 access is granted; and
- 1695
- 1696 7) other persons who are lawfully entitled to the information (e.g., persons
- 1697 with a valid subpoena, law enforcement personnel, or the attorneys of the
- 1698 individual in question).
- 1699

1700 (Source: Amended at 50 Ill. Reg. _____, effective _____)

1701
1702 **Section 385.100 Confidentiality of Background Check Information**

1703
1704 *Any employee of the Department of Children and Family Services, ~~Illinois~~ ~~the Illinois~~ State*
1705 *Police, or a child care facility receiving confidential information under Section 4.1 and Section*
1706 *4.3 of the Child Care Act of 1969 ~~this Section~~ who gives or causes to be given any confidential*
1707 *information concerning any criminal convictions or child abuse or neglect reports ~~information~~ of*
1708 *ana child care facility applicant, ~~or child care facility~~ employee, or volunteer of a child care*
1709 *facility or non-licensed service provider, shall be guilty of a Class A misdemeanor unless release*
1710 *of such information is authorized by Sections 4.1 and 4.3 of the Child Care Act of 1969 [225*
1711 *ILCS 10/4.1 and 4.3].*

1712
1713 (Source: Amended at 50 Ill. Reg. _____, effective _____)

1714
1715 SUBPART G: SEVERABILITY OF THIS PART

1716
1717 **Section 385.110 Severability of This Part**

1718

1719 If any court of competent jurisdiction finds that any rule, clause, phrase, or provision of this Part
1720 is unconstitutional or invalid for any reason whatsoever, this finding shall not affect the validity
1721 of the remaining portions of this Part.

1722

1723 (Source: Amended at 50 Ill. Reg. _____, effective _____)

1724

1725 **Section 385.APPENDIX A Criminal Convictions Preventing Licensure, Employment, or**
1726 **Residence in a Family Home in Which a Child Care Facility Operates, ~~or Placement with~~**
1727 **~~Relatives~~**
1728

1729 *No applicant may receive a license from the Department, and no person may be employed by a*
1730 *child care facility licensed by the Department, who has been declared a sexually dangerous*
1731 *person under the Sexually Dangerous Persons Act [725 ILCS 205, Art. 105] or convicted of*
1732 *committing or attempting to commit any of the following offenses stipulated under the Criminal*
1733 *Code of 1961 or the Criminal Code of 2012:*

1734
1735 **Lifetime Bars (Non-Waivable)**
1736

- 1737 (1) *murder;*
1738 (1.1) *solicitation of murder;*
1739 (1.2) *solicitation of murder for hire;*
1740 (1.3) *intentional homicide of an unborn child;*
1741 (1.4) *voluntary manslaughter of an unborn child;*
1742 (1.5) *involuntary manslaughter;*
1743 (1.6) *reckless homicide;*
1744 (1.7) *concealment of a homicidal death;*
1745 (1.8) *involuntary manslaughter of an unborn child;*
1746 (1.9) *reckless homicide of an unborn child;*
1747 (1.10) *drug-induced homicide;*
1748 (2) *a sex offense under Article 11, except offenses described in Sections 11-7, 11-8, 11-12,*
1749 *11-13, 11-35, 11-40, and 11-45;*
1750 (3) *kidnapping;*
1751 (3.1) *aggravated unlawful restraint;*
1752 (3.2) *forcible detention;*
1753 (3.3) *harboring a runaway;*
1754 (3.4) *aiding and abetting child abduction;*
1755 (4) *aggravated kidnapping;*
1756 (5) *child abduction;*
1757 (6) *aggravated battery of a child as described in Section 12-4.3 or subdivision (b)(1) of*
1758 *Section 12-3.05~~(b)(1)~~;*
1759 (7) *criminal sexual assault;*
1760 (8) *aggravated criminal sexual assault;*
1761 (8.1) *predatory criminal sexual assault of a child;*
1762 (9) *criminal sexual abuse;*
1763 (10) *aggravated sexual abuse;*
1764 (11) *heinous battery as described in Section 12-4.1 or subdivision (a)(2) of Section 12-*
1765 *3.05~~(a)(2)~~;*
1766 (12) *aggravated battery with a firearm as described in Section 12-4.2 or subdivision (e)(1)*
1767 *(e)(2), (e)(3), or (e)(4) of Section 12-3.05~~(e)(1), (e)(2), (e)(3), or (e)(4)~~;*

- 1768 (13) *tampering with food, drugs, or cosmetics;*
- 1769 (14) *drug induced infliction of great bodily harm as described in Section 12-4.7 or subdivision*
- 1770 *(g)(1) of Section 12-3.05~~(g)(1)~~;*
- 1771 (15) *hate crime;*
- 1772 (16) *stalking;*
- 1773 (17) *aggravated stalking;*
- 1774 (18) *threatening public officials;*
- 1775 (19) *home invasion;*
- 1776 (20) *vehicular invasion;*
- 1777 (21) *criminal transmission of HIV;*
- 1778 (22) *criminal abuse or neglect of an elderly person or person with a disability as described in*
- 1779 *Section 12-21 or subsection (e) of Section 12-4.4a~~(e)~~;*
- 1780 (23) *child abandonment;*
- 1781 (24) *endangering the life or health of a child;*
- 1782 (25) *ritual mutilation;*
- 1783 (26) *ritualized abuse of a child;*
- 1784 (27) *an offense in any other jurisdiction the elements of which are similar and bear a*
- 1785 *substantial relationship to any of the offenses listed in this section~~offenses listed in this~~*
- 1786 *section. [225 ILCS 10/4.2(b)]*

Financial-type Crimes

- 1787
- 1788
- 1789
- 1790 *Effective July 19, 2019~~Effective July 19, 2019~~, for applicants with access to confidential*
- 1791 *financial information or who submit documentation to support billing, the Department may, in*
- 1792 *its discretion, deny or refuse to renew a license to an applicant who has been convicted of*
- 1793 *committing or attempting to commit any of the following felony offenses:*
- 1794
- 1795 (1) *financial institution fraud under Section 17-10.6 of the Criminal Code of 1961 or the*
- 1796 *Criminal Code of 2012;*
- 1797 (2) *identity theft under Section 16-30 of the Criminal Code of 1961 or the Criminal Code of*
- 1798 *2012;*
- 1799 (3) *financial exploitation of an elderly person or a person with a disability under Section 17-*
- 1800 *56 of the Criminal Code of 1961 or the Criminal Code of 2012;*
- 1801 (4) *computer tampering under Section 17-51 of the Criminal Code of 1961 or the Criminal*
- 1802 *Code of 2012;*
- 1803 (5) *aggravated computer tampering under Section 17-52 of the Criminal Code of 1961 or the*
- 1804 *Criminal Code of 2012;*
- 1805 (6) *computer fraud under Section 17-50 of the Criminal Code of 1961 or the Criminal Code*
- 1806 *of 2012;*
- 1807 (7) *deceptive practices under Section 17-1 of the Criminal Code of 1961 or the Criminal*
- 1808 *Code of 2012;*
- 1809 (8) *forgery under Section 17-3 of the Criminal Code of 1961 or the Criminal Code of 2012;*
- 1810 (9) *State benefits fraud under Section 17-6 of the Criminal Code of 1961 or the Criminal*

- 1811 Code of 2012;
- 1812 (10) mail fraud and wire fraud under Section 17-24 of the Criminal Code of 1961 or the
- 1813 Criminal Code of 2012;
- 1814 (11) theft under paragraphs ~~Section 16-1(b)~~(1.1) through (11) of subsection (b) of Section 16-
- 1815 1 of the Criminal Code of 1961 or the Criminal Code of 2012. [225 ILCS 10/4.2(b-1.5)]
- 1816

1817 **Waivable Bars (Not Including Foster Homes or Host Homes)**

1818

1819 *No new applicant and, on the date of licensure renewal, no current licensee may operate or*

1820 *receive a license from the Department to operate, no person may be employed by, and no adult*

1821 *person may reside in a child care facility licensed by the Department who has been convicted of*

1822 *committing or attempting to commit any of the following offenses or an offense in any other*

1823 *jurisdiction the elements of which are similar and bear a substantial relationship to any of the*

1824 *following offenses (unless waived as provided in this section) ~~(unless waived as provided in this~~*

1825 *section):*

1826

1827 (I) BODILY HARM

1828

- 1829 (1) *Felony aggravated assault.*‡
- 1830 (2) *Vehicular endangerment.*‡
- 1831 (3) *Felony domestic battery.*‡
- 1832 (4) *Aggravated battery.*‡
- 1833 (5) *Heinous battery.*‡
- 1834 (6) *Aggravated battery with a firearm.*‡
- 1835 (7) *Aggravated battery of an unborn child.*‡
- 1836 (8) *Aggravated battery of a senior citizen.*‡
- 1837 (9) *Intimidation.*‡
- 1838 (10) *Compelling organization membership of persons.*‡
- 1839 (11) *Abuse and criminal neglect of a long term care facility resident.*‡
- 1840 (12) *Felony violation of an order of protection.*‡
- 1841

1842 (II) OFFENSES AFFECTING PUBLIC HEALTH, SAFETY, AND DECENCY

1843

- 1844 (1) *Felony unlawful use of weapons.*‡
- 1845 (2) *Aggravated discharge of a firearm.*‡
- 1846 (3) *Reckless discharge of a firearm.*‡
- 1847 (4) *Unlawful use of metal piercing bullets.*‡
- 1848 (5) *Unlawful sale or delivery of firearms on the premises of any school.*‡
- 1849 (6) *Disarming a police officer.*‡
- 1850 (7) *Obstructing justice.*‡
- 1851 (8) *Concealing or aiding a fugitive.*‡
- 1852 (9) *Armed violence.*‡
- 1853 (10) *Felony contributing to the criminal delinquency of a juvenile.*‡

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(III) DRUG OFFENSES

- (1) Possession of more than 30 grams of cannabis.‡
- (2) Manufacture of more than 10 grams of cannabis.‡
- (3) Cannabis trafficking.‡
- (4) Delivery of cannabis on school grounds.‡
- (5) Unauthorized production of more than 5 cannabis sativa plants.‡
- (6) Calculated criminal cannabis conspiracy.‡
- (7) Unauthorized manufacture or delivery of controlled substances.‡
- (8) Controlled substance trafficking.‡
- (9) Manufacture, distribution, or advertisement of look-alike substances.‡
- (10) Calculated criminal drug conspiracy.‡
- (11) Street gang criminal drug conspiracy.‡
- (12) Permitting unlawful use of a building.‡
- (13) Delivery of controlled, counterfeit, or look-alike substances to persons under age 18, or at truck stops, rest stops, or safety rest areas, or on school property.‡
- (14) Using, engaging, or employing persons under 18 to deliver controlled, counterfeit, or look-alike substances.‡
- (15) Delivery of controlled substances.‡
- (16) Sale or delivery of drug paraphernalia.‡
- (17) Felony possession, sale, or exchange of instruments adapted for use of a controlled substance, methamphetamine, or cannabis by subcutaneous injection.‡
- (18) Felony possession of a controlled substance.
- (1918) Any violation of the Methamphetamine Control and Community Protection Act [720 ILCS 646]. [225 ILCS 10/4.2(b-1)]

~~For the offenses described in Waivable Bars (Not Including Foster Homes), the Department may make an exception and, for child care facilities other than foster family homes, issue a new child care facility license to, or renew the existing child care facility license of, an applicant, a person employed by a child care facility, or an applicant who has an adult residing in a home child care facility, provided that all of the following requirements are met:~~

- ~~(1) The relevant offense occurred more than 5 years prior to the date of application or renewal, except for drug offenses. The relevant drug offense must have occurred more than 10 years prior to the date of the application or renewal, unless the applicant passed a drug test, arranged and paid for by the child care facility, no less than 5 years after the offense;~~
- ~~(2) The Department conducts a background check and assesses all convictions and recommendations of the child care facility to determine if hiring or licensing the applicant is in accordance with Department administrative rules and procedures; and~~
- ~~(3) The applicant meets all other requirements and qualifications for licensure. [225 ILCS 10/4.2(b-2)]~~

1897
1898 *In evaluating whether to grant the exception, the Department must carefully review any relevant*
1899 *documents to determine whether the applicant, despite the disqualifying convictions, poses a*
1900 *substantial risk to State resources or clients. In making this determination, the following*
1901 *guidelines shall be used:*

- 1902
1903 (1) *the age of the applicant when the offense was committed;*
1904 (2) *the circumstances surrounding the offense;*
1905 (3) *the length of time since the conviction;*
1906 (4) *the specific duties and responsibilities necessarily related to the license being applied for*
1907 *and the bearing, if any, that the applicant's conviction history may have on his or her*
1908 *fitness to perform these duties and responsibilities;*
1909 (5) *the applicant's employment references;*
1910 (6) *the applicant's character references and any certificates of achievement;*
1911 (7) *an academic transcript showing educational attainment since the disqualifying*
1912 *conviction;*
1913 (8) *a Certificate of Relief from Disabilities or Certificate of Good Conduct; and*
1914 (9) *anything else that speaks to the applicant's character. [225 ILCS 10/4.2(e)]*
1915

1916 **Additional Foster Home or Host Home Restrictions**

1917
1918 *No applicant may receive a license from the Department to operate a foster family home or host*
1919 *home, and no adult person may reside in a foster family home or host home licensed by the*
1920 *Department, who has been convicted of committing or attempting to commit any of the following*
1921 *offenses stipulated under the Criminal Code of 1961, the Criminal Code of 2012, the Cannabis*
1922 *Control Act [720 ILCS 550], the Methamphetamine Control and Community Protection Act [720*
1923 *ILCS 646], and the Illinois Controlled Substances Act [725 ILCS 70]:*

1924
1925 (I) *OFFENSES DIRECTED AGAINST THE PERSON*

1926
1927 (A) *KIDNAPPING AND RELATED OFFENSES*

- 1928
1929 (1) *Unlawful restraint.*

1930
1931 (B) *BODILY HARM*

- 1932
1933 (2) *Felony aggravated assault.;*
1934 (3) *Vehicular endangerment.;*
1935 (4) *Felony domestic battery.;*
1936 (5) *Aggravated battery.;*
1937 (6) *Heinous battery.;*
1938 (7) *Aggravated battery with a firearm.;*
1939 (8) *Aggravated battery of an unborn child.;*

- 1940 (9) *Aggravated battery of a senior citizen.*
- 1941 (10) *Intimidation.*
- 1942 (11) *Compelling organization membership of persons.*
- 1943 (12) *Abuse and criminal neglect of a long term care facility resident.*
- 1944 (13) *Felony violation of an order of protection.*

(II) OFFENSES DIRECTED AGAINST PROPERTY

- 1947
- 1948 (14) *Felony theft.*
- 1949 (15) *Robbery.*
- 1950 (16) *Armed robbery.*
- 1951 (17) *Aggravated robbery.*
- 1952 (18) *Vehicular hijacking.*
- 1953 (19) *Aggravated vehicular hijacking.*
- 1954 (20) *Burglary.*
- 1955 (21) *Possession of burglary tools.*
- 1956 (22) *Residential burglary.*
- 1957 (23) *Criminal fortification of a residence or building.*
- 1958 (24) *Arson.*
- 1959 (25) *Aggravated arson.*
- 1960 (26) *Possession of explosive or explosive incendiary devices.*

(III) OFFENSES AFFECTING PUBLIC HEALTH, SAFETY, AND DECENCY

- 1961
- 1962
- 1963
- 1964 (27) *Felony unlawful use of weapons.*
- 1965 (28) *Aggravated discharge of a firearm.*
- 1966 (29) *Reckless discharge of a firearm.*
- 1967 (30) *Unlawful use of metal piercing bullets.*
- 1968 (31) *Unlawful sale or delivery of firearms on the premises of any school.*
- 1969 (32) *Disarming a police officer.*
- 1970 (33) *Obstructing justice.*
- 1971 (34) *Concealing or aiding a fugitive.*
- 1972 (35) *Armed violence.*
- 1973 (36) *Felony contributing to the criminal delinquency of a juvenile.*

(IV) DRUG OFFENSES

- 1974
- 1975
- 1976
- 1977 (37) *Possession of more than 30 grams of cannabis.*
- 1978 (38) *Manufacture of more than 10 grams of cannabis.*
- 1979 (39) *Cannabis trafficking.*
- 1980 (40) *Delivery of cannabis on school grounds.*
- 1981 (41) *Unauthorized production of more than 5 cannabis sativa plants.*
- 1982 (42) *Calculated criminal cannabis conspiracy.*

- 1983 (43) *Unauthorized manufacture or delivery of controlled substances.*‡
- 1984 (44) *Controlled substance trafficking.*‡
- 1985 (45) *Manufacture, distribution, or advertisement of look-alike substances.*‡
- 1986 (46) *Calculated criminal drug conspiracy.*‡
- 1987 (46.5) *Street gang criminal drug conspiracy.*‡
- 1988 (47) *Permitting unlawful use of a building.*‡
- 1989 (48) *Delivery of controlled, counterfeit, or look-alike substances to persons under age*
- 1990 *18, or at truck stops, rest stops, or safety rest areas, or on school property.*‡
- 1991 (49) *Using, engaging, or employing persons under 18 to deliver controlled,*
- 1992 *counterfeit, or look-alike substances.*‡
- 1993 (50) *Delivery of controlled substances.*‡
- 1994 (51) *Sale or delivery of drug paraphernalia.*‡
- 1995 (52) *Felony possession, sale, or exchange of instruments adapted for use of a*
- 1996 *controlled substance, methamphetamine, or cannabis by subcutaneous injection.*‡
- 1997 (53) *Any violation of the Methamphetamine Control and Community Protection Act.*
- 1998 [\[225 ILCS 10/4.2\(c\)\]](#)
- 1999

2000 **Waiver Conditions for Foster Homes**

2001

2002 *The Department may make an exception and issue a new foster family home license or may*

2003 *renew an existing foster family home license of an applicant who was convicted of an offense*

2004 *described in the section titled Additional Foster Home Restrictions, provided all of the following*

2005 *requirements are met:*

- 2006
- 2007 (1) *The relevant criminal offense or offenses occurred more than 10 years prior to the date*
 - 2008 *of application or renewal;*
 - 2009 (2) *The applicant had previously disclosed the conviction or convictions to the Department*
 - 2010 *for purposes of a background check;*
 - 2011 (3) *After the disclosure, the Department either placed a child in the home or the foster family*
 - 2012 *home license was issued;*
 - 2013 (4) *During the background check, the Department had assessed and waived the conviction in*
 - 2014 *compliance with the existing statutes and rules in effect at the time of the hire or*
 - 2015 *licensure;*
 - 2016 (5) *The applicant meets all other requirements and qualifications to be licensed as a foster*
 - 2017 *family home under this Act and the Department's administrative rules;*
 - 2018 (6) *The applicant has a history of providing a safe, stable home environment and appears*
 - 2019 *able to continue to provide a safe, stable home environment. [225 ILCS 10/4.2(d)]*

2020

2021 *In evaluating whether to grant the exception, the Department must carefully review any relevant*

2022 *documents to determine whether the applicant, despite the disqualifying convictions, poses a*

2023 *substantial risk to State resources or clients. In making this determination, the following*

2024 *guidelines shall be used:*

2025

- 2026 ~~(1) the age of the applicant when the offense was committed;~~
- 2027 ~~(2) the circumstances surrounding the offense;~~
- 2028 ~~(3) the length of time since the conviction;~~
- 2029 ~~(4) the specific duties and responsibilities necessarily related to the license being applied for~~
- 2030 ~~and the bearing, if any, that the applicant's conviction history may have on his or her~~
- 2031 ~~fitness to perform these duties and responsibilities;~~
- 2032 ~~(5) the applicant's employment references;~~
- 2033 ~~(6) the applicant's character references and any certificates of achievement;~~
- 2034 ~~(7) an academic transcript showing educational attainment since the disqualifying~~
- 2035 ~~conviction;~~
- 2036 ~~(8) a Certificate of Relief from Disabilities or Certificate of Good Conduct; and~~
- 2037 ~~(9) anything else that speaks to the applicant's character. [225 ILCS 10/4.2(e)]~~

2038

2039 (Source: Amended at 50 Ill. Reg. _____, effective _____)