**Section 955.165 Fingerprint-Based Criminal History Records Check**

a) Educational entities, other than secondary schools, and health care employers are required to check the Health Care Worker Registry before allowing a student to enter a training program or hiring an employee to determine:

1) Whether a fingerprint-based criminal history records check has previously been conducted, which is indicated by the identifier of "FEE\_APP" or "CAAPP".

A) *As long as the* student, applicant or *employee has had* a background check *and stays active on the Health Care Worker Registry, no further* fingerprint-based *criminal history record checks are required.* (Section 33(g) of the Act)

B) If the individual has disqualifying convictions and a waiver has not been granted pursuant to this Part, the individual is not allowed to work as a direct care giver for a health care employer or as an individual with access to residents, the resident's living quarters, or the resident's financial, medical or personal records in a long-term care setting.

2) Whether the individual is active on the Health Care Worker Registry.

A) *If an individual is inactive on the Health Care Worker Registry, that individual is prohibited from being hired to work as a certified nursing assistant if, since the individual's most recent completion of a competency test* or the date the individual was deemed competent by the Department of Public Health, *there has been a period of 24 consecutive months during which the individual has not provided nursing or nursing-related services for pay.* (Section 33(g) of the Act)

B) *If the individual can provide proof of having retained his or her certification by not having a 24-consecutive-month break in service for pay, he or she may be hired as a certified nursing assistant and that employment information shall be entered into the Health Care Worker Registry*. (Section 33(g) of the Act)

C) Not retaining his or her certification does not prevent that individual from being hired in a position that does not require the individual to be a certified nursing assistant.

b) *If the individual has not had a background check or is not active on the Health Care Worker Registry, then the health care employer shall initiate a fingerprint-based* criminal history records *check*. (Section 33(g) of the Act)

c) Educational entities and health care employers shall conduct *Internet searches on certain web sites, including without limitation the Illinois Sex Offender Registry, the Department of Corrections' Sex Offender Search Engine, the Department of Corrections' Inmate Search Engine, the Department of Corrections Wanted Fugitives Search Engine, the National Sex Offender Public Registry, and the website of the Health and Human Services Office of Inspector General to determine if the applicant has been adjudicated a sex offender, has been a prison inmate, or has committed Medicare or Medicaid fraud, or* shallconduct *similar searches* as provided by the web-based application. (Section 15 of the Act)

d) *Any student, applicant, or employee* to whom the Act and this Part apply and *who desires to be included on the Department of Public Health's Health Care Worker Registry shall authorize the Department of Public Health or its designee to request a fingerprint-based criminal history records check to determine if the individual has a conviction for a disqualifying offense* by completing and signing an authorization and disclosure form. *This authorization shall allow the Department of Public Health to request and receive information and assistance from any State or local governmental agency.* (Section 33(b) of the Act)

1) *A* health care *employer may initiate a fingerprint-based* criminal history records *check required by the Act* or this Part *for any of its employees* or volunteers to whom the Act and this Part apply*, but may not use this process to initiate background checks for residents* or for employees or volunteers not covered by the Act and this Part*. The results of any fingerprint-based* criminal history records *check* required by the Act and this Part *shall be entered in the Health Care Worker Registry*. (Section 33(f) of the Act)

2) No educational entity or health care employer shall use the processes and procedures provided in the Act or this Part to conduct a fingerprint-based criminal history records check for any purpose not authorized by the Act or this Part. Nothing in this Section prohibits an educational entity or health care employer from using means other than the processes and procedures provided in the Act or this Part to conduct a criminal history records check of any student, applicant, or employee who is not covered by the Act or this Part.

e) *An educational entity, other than a secondary school, conducting a* certifiednursing assistant *training program shall initiate a fingerprint-based criminal history records check required by* the *Act* and this Part *prior to entry of an individual into the training program.* (Section 33(c) of the Act)

f) *A health care employer who makes a conditional offer of employment to an applicant* who is not exempt under Section 955.130, *for a position as an employee, shall initiate a fingerprint-based criminal history records check on the applicant, if such a background check has not been previously conducted.* A health care employer shall not use the fingerprint-based criminal history records check process provided in the Act and this Part to initiate background checks for applicants for employment positions to which the Act and this Part do not apply. (Section 33(d) of the Act)

g) *Workforce intermediaries and organizations providing pro bono legal services may initiate a fingerprint-based criminal history record check if a conditional offer of employment has not been made and a background check has not been previously conducted for an individual who has a disqualifying conviction and is receiving services from a workforce intermediary or an organization providing pro bono legal services.* (Section 33(d) of the Act)

h) *When initiating a background check, an educational entity, health care employer*, staffing agency, workforce intermediary, or organization that provides pro bono legal services *shall electronically submit to the Department of Public Health the student's, applicant's, or employee's social security number, demographics, disclosure and authorization information in a format prescribed by the Department of Public Health within 2 working days after the authorization is secured.* (Section 33 (e) of the Act)

i) *The student, applicant, or employee shall* go to a livescan vendor and *have his or her fingerprints collected electronically and transmitted to the Department of State Police within 10 working days* after signing the authorization and disclosure form*.* Each individual shall submit his or her fingerprints in an electronic manner prescribed by the Department of State Police. (Section 33(e) of the Act)

1) The student, applicant, or employee shall bring the portion of the livescan request form that is completed by the livescan vendor back to the educational entity or health care employer as proof that his or her fingerprints have been collected. The educational entity or health care employer shall provide the transaction control number, obtained from this portion of the livescan request form, whenever any follow-up inquiries are made about the progress of the background check being processed.

2) If the fingerprints are rejected by the Department of State Police, the student, applicant, or employee shall go to a livescan vendor and have his or her fingerprints collected electronically a second time.

3) If the fingerprints are rejected by the Department of State Police a second time, the educational entity or health care employer shall conduct a complete name-based UCIA criminal history records check through the Department of State Police and mail a copy of the results of the background check to the Department within 10 working days after receipt. The UCIA criminal history records check shall be requested as prescribed by the Department of State Police. The results of the UCIA criminal history records check shall have been issued by the Department of State Police no earlier than 31 days prior to hire. A UCIA name-based criminal history records check may be used only when there is proof that the individual's fingerprints have been rejected twice by the Department of State Police within the previous 12 months.

4) If the student, applicant, or employee does not go to a livescan vendor and have his or her fingerprints collected electronically within 10 working days, the individual shall be suspended from participating in a training program if a student, or suspended from working if an employee, until such time as proof is provided that the individual has had his or her fingerprints collected electronically from a livescan vendor.

5) If the student, applicant, or employee has not had his or her fingerprints collected electronically by a vendor within 30 days after being hired or beginning a training program, the employee shall be terminated or the student shall be dropped from the training program. The educational entity or health care employer shall withdraw the background check application from the Health Care Worker Registry.

j) *The educational entity, health care employer*, staffing agency, workforce intermediary, or organization that provides pro bono legal services *shall transmit all necessary information and fees to the livescan vendor and Department of State Police within 10 working days after receipt of the authorization* for a criminal history records check. (Section 33(e) of the Act)

1) *Application fees shall include,* *but are not limited to, the amounts established by the Department of State Police to process fingerprint-based criminal history records checks* and the amount charged by the livescan vendor for collecting and transmitting the fingerprints.

2) Health care employers that are certified to participate in the Medicaid program are required to pay for certified nursing assistants' (CNA) application fees. These fees shall be a direct pass-through on the cost report submitted by the employer to the Medicaid agency.

3) *Any student, applicant, or employee who is not a certified nursing assistant may be required to pay all related application and fingerprinting fees.* (Section 45 of the Act)

k) *The results of the criminal history records checks shall be maintained by the Department of Public Health's Health Care Worker Registry* as long as the employee stays active on the Registry. (Section 33(e) of the Act)

l) *A health care employer* *or long-term care facility* *may conditionally employ an applicant for up to* three *months pending the results of a fingerprint-based criminal history records check* required by the Act and this Part. During this time, the employee shall have adequate supervision, which is the type and frequency of supervision required to prevent abuse, neglect, or theft regarding patients, clients, or residents. (Section 33(l) of the Act)

m) *The livescan vendors may act as the designee for individuals, educational entities*, staffing agencies, workforce intermediaries, organizations that provide pro bono legal services, *or health care employers in the collection of Department of State Police fees and deposit those fees into the State Police Services Fund.* (Section 33(b) of the Act)

n) *If the individual is not active on the Health Care Worker Registry, then the health care employer shall initiate a fingerprint-based* criminal history record *check* required by the Act and this Part. (Section 33(g) of the Act)

o) *If the Department of State Police notifies the Department of Public Health that an employee has a new conviction of a disqualifying offense, based upon fingerprints that were previously submitted, then:*

1) *the Health Care Worker Registry shall notify the employee's last known employer of the offense* by sending an automatic e-mail to the health care employer;

2) *a record of the employee's disqualifying offense shall be entered on the Health Care Worker Registry; and*

3) *the individual shall no longer be eligible to work as an employee unless he or she obtains a waiver pursuant to* this Part. (Section 33(h) of the Act)

p) The Health Care Worker Registry will indicate only those criminal convictions that are disqualifying under the Act. Nothing in this Part shall prohibit the health care employer from developing policies concerning employment of individuals whose criminal history records checks indicate convictions for offenses that are not disqualifying.

(Source: Amended at 44 Ill. Reg. 18422, effective October 29, 2020)