

1 AN ACT concerning regulation.

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

4 Section 5. The Health Care Worker Background Check Act is
5 amended by changing Sections 15, 33, and 40 as follows:

6 (225 ILCS 46/15)

7 Sec. 15. Definitions. In this Act:

8 "Applicant" means an individual enrolling in a training
9 program, seeking employment, whether paid or on a volunteer
10 basis, with a health care employer who has received a bona fide
11 conditional offer of employment.

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

18 "Department" means the Department of Public Health.

19 "Direct care" means the provision of nursing care or
20 assistance with feeding, dressing, movement, bathing,
21 toileting, or other personal needs, including home services as
22 defined in the Home Health, Home Services, and Home Nursing
23 Agency Licensing Act. The entity responsible for inspecting and

1 licensing, certifying, or registering the health care employer
2 may, by administrative rule, prescribe guidelines for
3 interpreting this definition with regard to the health care
4 employers that it licenses.

5 "Director" means the Director of Public Health.

6 "Disqualifying offenses" means those offenses set forth in
7 Section 25 of this Act.

8 "Employee" means any individual hired, employed, or
9 retained, whether paid or on a volunteer basis, to which this
10 Act applies.

11 "Finding" means the Department's determination of whether
12 an allegation is verified and substantiated.

13 "Fingerprint-based criminal history records check" means a
14 livescan fingerprint-based criminal history records check
15 submitted as a fee applicant inquiry in the form and manner
16 prescribed by the Department of State Police.

17 "Health care employer" means:

18 (1) the owner or licensee of any of the following:

19 (i) a community living facility, as defined in the
20 Community Living Facilities Act;

21 (ii) a life care facility, as defined in the Life
22 Care Facilities Act;

23 (iii) a long-term care facility;

24 (iv) a home health agency, home services agency, or
25 home nursing agency as defined in the Home Health, Home
26 Services, and Home Nursing Agency Licensing Act;

1 (v) a hospice care program or volunteer hospice
2 program, as defined in the Hospice Program Licensing
3 Act;

4 (vi) a hospital, as defined in the Hospital
5 Licensing Act;

6 (vii) (blank);

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

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

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

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

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

17 (xii) the University of Illinois Hospital,
18 Chicago;

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

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

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

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

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

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

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

13 "Initiate" means obtaining from a student, applicant, or
14 employee his or her social security number, demographics, a
15 disclosure statement, and an authorization for the Department
16 of Public Health or its designee to request a fingerprint-based
17 criminal history records check; transmitting this information
18 electronically to the Department of Public Health; conducting
19 Internet searches on certain web sites, including without
20 limitation the Illinois Sex Offender Registry, the Department
21 of Corrections' Sex Offender Search Engine, the Department of
22 Corrections' Inmate Search Engine, the Department of
23 Corrections Wanted Fugitives Search Engine, the National Sex
24 Offender Public Registry, and the List of Excluded Individuals
25 and Entities database on the website of the Health and Human
26 Services Office of Inspector General to determine if the

1 applicant has been adjudicated a sex offender, has been a
2 prison inmate, or has committed Medicare or Medicaid fraud, or
3 conducting similar searches as defined by rule; and having the
4 student, applicant, or employee's fingerprints collected and
5 transmitted electronically to the Department of State Police.

6 "Livescan vendor" means an entity whose equipment has been
7 certified by the Department of State Police to collect an
8 individual's demographics and inkless fingerprints and, in a
9 manner prescribed by the Department of State Police and the
10 Department of Public Health, electronically transmit the
11 fingerprints and required data to the Department of State
12 Police and a daily file of required data to the Department of
13 Public Health. The Department of Public Health shall negotiate
14 a contract with one or more vendors that effectively
15 demonstrate that the vendor has 2 or more years of experience
16 transmitting fingerprints electronically to the Department of
17 State Police and that the vendor can successfully transmit the
18 required data in a manner prescribed by the Department of
19 Public Health. Vendor authorization may be further defined by
20 administrative rule.

21 "Long-term care facility" means a facility licensed by the
22 State or certified under federal law as a long-term care
23 facility, including without limitation facilities licensed
24 under the Nursing Home Care Act, the Specialized Mental Health
25 Rehabilitation Act of 2013, the ID/DD Community Care Act, or
26 the MC/DD Act, a supportive living facility, an assisted living

1 establishment, or a shared housing establishment or registered
2 as a board and care home.

3 "Resident" means a person, individual, or patient under the
4 direct care of a health care employer or who has been provided
5 goods or services by a health care employer.

6 (Source: P.A. 99-180, eff. 7-29-15; 100-432, eff. 8-25-17.)

7 (225 ILCS 46/33)

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

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

23 (b) On October 1, 2007 or as soon thereafter as is
24 reasonably practical, in the discretion of the Director of
25 Public Health, and thereafter, any student, applicant, or

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

25 (c) On October 1, 2007 or as soon thereafter as is
26 reasonably practical, in the discretion of the Director of

1 Public Health, and thereafter, an educational entity, other
2 than a secondary school, conducting a nurse aide training
3 program shall initiate a fingerprint-based criminal history
4 records check required by this Act prior to entry of an
5 individual into the training program.

6 (d) On October 1, 2007 or as soon thereafter as is
7 reasonably practical, in the discretion of the Director of
8 Public Health, and thereafter, a health care employer who makes
9 a conditional offer of employment to an applicant for a
10 position as an employee shall initiate a fingerprint-based
11 criminal history record check, requested by the Department of
12 Public Health, on the applicant, if such a background check has
13 not been previously conducted. Workforce intermediaries and
14 organizations providing pro bono legal services may initiate a
15 fingerprint-based criminal history record check if a
16 conditional offer of employment has not been made and a
17 background check has not been previously conducted for an
18 individual who has a disqualifying conviction and is receiving
19 services from a workforce intermediary or an organization
20 providing pro bono legal services.

21 (e) When initiating a background check requested by the
22 Department of Public Health, an educational entity, ~~or~~ health
23 care employer, workforce intermediary, or organization that
24 provides pro bono legal services shall electronically submit to
25 the Department of Public Health the student's, applicant's, or
26 employee's social security number, demographics, disclosure,

1 and authorization information in a format prescribed by the
2 Department of Public Health within 2 working days after the
3 authorization is secured. The student, applicant, or employee
4 shall have his or her fingerprints collected electronically and
5 transmitted to the Department of State Police within 10 working
6 days. The educational entity, ~~or~~ health care employer, workforce intermediary, or organization that provides pro bono
7 legal services shall transmit all necessary information and
8 fees to the livescan vendor and Department of State Police
9 within 10 working days after receipt of the authorization. This
10 information and the results of the criminal history record
11 checks shall be maintained by the Department of Public Health's
12 Health Care Worker Registry.
13

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

20 (g) As long as the employee or trainee has had a
21 fingerprint-based criminal history record check required by
22 this Act and stays active on the Health Care Worker Registry,
23 no further criminal history record checks are required, as the
24 Department of State Police shall notify the Department of
25 Public Health of any additional convictions associated with the
26 fingerprints previously submitted. Health care employers shall

1 check the Health Care Worker Registry before hiring an employee
2 to determine that the individual has had a fingerprint-based
3 record check required by this Act and has no disqualifying
4 convictions or has been granted a waiver pursuant to Section 40
5 of this Act. If the individual has not had such a background
6 check or is not active on the Health Care Worker Registry, then
7 the health care employer shall initiate a fingerprint-based
8 record check requested by the Department of Public Health. If
9 an individual is inactive on the Health Care Worker Registry,
10 that individual is prohibited from being hired to work as a
11 certified nursing assistant if, since the individual's most
12 recent completion of a competency test, there has been a period
13 of 24 consecutive months during which the individual has not
14 provided nursing or nursing-related services for pay. If the
15 individual can provide proof of having retained his or her
16 certification by not having a 24-consecutive-month break in
17 service for pay, he or she may be hired as a certified nursing
18 assistant and that employment information shall be entered into
19 the Health Care Worker Registry.

20 (h) On October 1, 2007 or as soon thereafter as is
21 reasonably practical, in the discretion of the Director of
22 Public Health, and thereafter, if the Department of State
23 Police notifies the Department of Public Health that an
24 employee has a new conviction of a disqualifying offense, based
25 upon the fingerprints that were previously submitted, then (i)
26 the Health Care Worker Registry shall notify the employee's

1 last known employer of the offense, (ii) a record of the
2 employee's disqualifying offense shall be entered on the Health
3 Care Worker Registry, and (iii) the individual shall no longer
4 be eligible to work as an employee unless he or she obtains a
5 waiver pursuant to Section 40 of this Act.

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

21 (j) In the event that an applicant or employee has a waiver
22 for one or more disqualifying offenses pursuant to Section 40
23 of this Act and he or she is otherwise eligible to work, the
24 Health Care Worker Registry shall indicate that the applicant
25 or employee is eligible to work and that additional information
26 is available on the Health Care Worker Registry. The Health

1 Care Worker Registry may indicate that the applicant or
2 employee has received a waiver.

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

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

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

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

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

1 Act.

2 (5) That the employee shall be terminated if the
3 criminal records report indicates that the employee has a
4 record of a conviction of any of the criminal offenses
5 enumerated in Section 25.

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

11 (l) A health care employer or long-term care facility may
12 conditionally employ an applicant for up to 3 months pending
13 the results of a fingerprint-based criminal history record
14 check requested by the Department of Public Health.

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

20 (n) As used in this Section:

21 "Workforce intermediaries" means organizations that
22 function to provide job training and employment services.
23 Workforce intermediaries include institutions of higher
24 education, faith-based and community organizations, and
25 workforce investment boards.

26 "Organizations providing pro bono legal services" means

1 legal services performed without compensation or at a
2 significantly reduced cost to the recipient that provide
3 services designed to help individuals overcome statutory
4 barriers that would prevent them from entering positions in the
5 healthcare industry.

6 (Source: P.A. 99-872, eff. 1-1-17; 100-432, eff. 8-25-17.)

7 (225 ILCS 46/40)

8 Sec. 40. Waiver.

9 (a) Any student, applicant, enrollee in a training program,
10 individual receiving services from a workforce intermediary or
11 organization providing pro bono legal services, or employee
12 listed on the Health Care Worker Registry may request a waiver
13 of the prohibition against employment by:

14 (1) completing a waiver application on a form
15 prescribed by the Department of Public Health;

16 (2) providing a written explanation of each conviction
17 to include (i) what happened, (ii) how many years have
18 passed since the offense, (iii) the individuals involved,
19 (iv) the age of the applicant at the time of the offense,
20 and (v) any other circumstances surrounding the offense;
21 and

22 (3) providing official documentation showing that all
23 fines have been paid, if applicable and except for in the
24 instance of payment of court-imposed fines or restitution
25 in which the applicant is adhering to a payment schedule,

1 and the date probation or parole was satisfactorily
2 completed, if applicable.

3 (b) The applicant may, but is not required to, submit
4 employment and character references and any other evidence
5 demonstrating the ability of the applicant or employee to
6 perform the employment responsibilities competently and
7 evidence that the applicant or employee does not pose a threat
8 to the health or safety of residents, patients, or clients.

9 (c) The Department of Public Health may, at the discretion
10 of the Director of Public Health, grant a waiver to an
11 applicant, student, or employee listed on the Health Care
12 Worker Registry. The Department of Public Health shall act upon
13 the waiver request within 30 days of receipt of all necessary
14 information, as defined by rule. The Department of Public
15 Health shall send an applicant, student, or employee written
16 notification of its decision whether to grant a waiver,
17 including listing the specific disqualifying offenses for
18 which the waiver is being granted or denied. The Department
19 shall issue additional copies of this written notification upon
20 the applicant's, student's, or employee's request.

21 (d) An individual shall not be employed from the time that
22 the employer receives a notification from the Department of
23 Public Health based upon the results of a fingerprint-based
24 criminal history records check containing disqualifying
25 conditions until the time that the individual receives a
26 waiver.

1 (e) The entity responsible for inspecting, licensing,
2 certifying, or registering the health care employer and the
3 Department of Public Health shall be immune from liability for
4 any waivers granted under this Section.

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

8 (Source: P.A. 99-872, eff. 1-1-17; 100-432, eff. 8-25-17.)

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.