

## Rep. Ann Williams

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# Filed: 3/15/2013

#### 09800HB2350ham001

LRB098 09859 MGM 42963 a

1 AMENDMENT TO HOUSE BILL 2350

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2350 by replacing

3 everything after the enacting clause with the following:

4 "Section 5. The Nursing Home Care Act is amended by

5 changing Section 2-201.5 as follows:

6 (210 ILCS 45/2-201.5)

7 Sec. 2-201.5. Screening prior to admission.

8 (a) All persons age 18 or older seeking admission to a

9 nursing facility must be screened to determine the need for

10 nursing facility services prior to being admitted, regardless

of income, assets, or funding source. Screening for nursing

12 facility services shall be administered through procedures

established by administrative rule. Screening may be done by

agencies other than the Department as established by

administrative rule. This Section applies on and after July 1,

16 1996. No later than October 1, 2010, the Department of

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Healthcare and Family Services, in collaboration with the
Department on Aging, the Department of Human Services, and the
Department of Public Health, shall file administrative rules
providing for the gathering, during the screening process, of
information relevant to determining each person's potential
for placing other residents, employees, and visitors at risk of
harm.

(a-1) Any screening performed pursuant to subsection (a) of this Section shall include a determination of whether any person is being considered for admission to a nursing facility due to a need for mental health services. For a person who needs mental health services, the screening shall also include an evaluation of whether there is permanent supportive housing, or an array of community mental health services, including but limited to supported housing, assertive treatment, and peer support services, that would enable the person to live in the community. The person shall be told about the existence of any such services that would enable the person to live safely and humanely and about available appropriate nursing home services that would enable the person to live safely and humanely, and the person shall be given the assistance necessary to avail himself or herself of available services.

(a-2) Pre-screening for persons with a serious mental illness shall be performed by a psychiatrist, a psychologist, a registered nurse certified in psychiatric nursing, a licensed

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clinical professional counselor, or a licensed clinical social worker, who is competent to (i) perform a clinical assessment of the individual, (ii) certify a diagnosis, (iii) make a determination about the individual's current need for treatment, including substance abuse treatment, and recommend specific treatment, and (iv) determine whether a facility or a community-based program is able to meet the needs of the individual.

For any person entering a nursing facility, the pre-screening agent shall make specific recommendations about what care and services the individual needs to receive, beginning at admission, to attain or maintain the individual's highest level of independent functioning and to live in the most integrated setting appropriate for his or her physical and personal care and developmental and mental health needs. These recommendations shall be revised as appropriate by the pre-screening or re-screening agent based on the results of resident review and in response to changes in the resident's wishes, needs, and interest in transition.

Upon the person entering the nursing facility, the Department of Human Services or its designee shall assist the person in establishing a relationship with a community mental health agency or other appropriate agencies in order to (i) promote the person's transition to independent living and (ii) support the person's progress in meeting individual goals.

(a-3) The Department of Human Services, by rule, shall

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provide for a prohibition on conflicts of interest for pre-admission screeners. The rule shall provide for waiver of those conflicts by the Department of Human Services if the Department of Human Services determines that a scarcity of qualified pre-admission screeners exists in a given community and that, absent a waiver of conflicts, an insufficient number of pre-admission screeners would be available. If a conflict is waived, the pre-admission screener shall disclose the conflict of interest to the screened individual in the manner provided for by rule of the Department of Human Services. For the purposes of this subsection, a "conflict of interest" includes, but is not limited to, the existence of a professional or financial relationship between (i) a PAS-MH corporate or a PAS-MH agent and (ii) a community provider or long-term care facility.

(b) In addition to the screening required by subsection (a), a facility, except for those licensed as long term care for under age 22 facilities, shall, within 24 hours after admission, request a criminal history background check pursuant to the Uniform Conviction Information Act for all persons age 18 or older seeking admission to the facility, unless a background check was initiated by a hospital pursuant to subsection (d) of Section 6.09 of the Hospital Licensing Act. Background checks conducted pursuant to this Section shall be based on the resident's name, date of birth, and other identifiers as required by the Department of State Police. If

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the results of the background check are inconclusive, the facility shall initiate a fingerprint-based check, unless the fingerprint check is waived by the Director of Public Health based on verification by the facility that the resident is completely immobile or that the resident meets other criteria related to the resident's health or lack of potential risk which may be established by Departmental rule. A waiver issued pursuant to this Section shall be valid only while the resident is immobile or while the criteria supporting the waiver exist. The facility shall provide for or arrange for any required fingerprint-based checks to be taken on the premises of the facility. If a fingerprint-based check is required, facility shall arrange for it to be conducted in a manner that is respectful of the resident's dignity and that minimizes any emotional or physical hardship to the resident. For live scan checks initiated on or after January 1, 2014, live scan vendors assisting in the initiation of fingerprint checks under this Section shall not charge fees in excess of those established under Section 37 of the Health Care Worker Background Check Act.

- (c) If the results of a resident's criminal history background check reveal that the resident is an identified offender as defined in Section 1-114.01, the facility shall do the following:
- 25 (1) Immediately notify the Department of State Police, 26 in the form and manner required by the Department of State

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Police, in collaboration with the Department of Public Health, that the resident is an identified offender.

(2) Within 72 hours, arrange for a fingerprint-based criminal history record inquiry to be requested on the identified offender resident. The inquiry shall be based on the subject's name, sex, race, date of birth, fingerprint images, and other identifiers required by the Department of State Police. The inquiry shall be processed through the files of the Department of State Police and the Federal Bureau of Investigation to locate any criminal history record information that may exist regarding the subject. The Federal Bureau of Investigation shall furnish to the Department of State Police, pursuant to an inquiry under this paragraph (2), any criminal history information contained in its files.

The facility shall comply with all applicable provisions contained in the Uniform Conviction Information Act.

All name-based and fingerprint-based criminal history record inquiries shall be submitted to the Department of State Police electronically in the form and manner prescribed by the Department of State Police. The Department of State Police may charge the facility a fee for processing name-based and fingerprint-based criminal history record inquiries. The fee shall be deposited into the State Police Services Fund. The fee shall not exceed the actual cost of processing the inquiry.

(d) (Blank).

- 1 Department shall develop (e) The and maintain 2 de-identified database of residents who have injured facility staff, facility visitors, or other residents, and the attendant 3 4 circumstances, solely for the purposes of evaluating and 5 improving resident pre-screening and assessment procedures 6 (including the Criminal History Report prepared under Section 7 adequacy of 2-201.6) and the Department requirements concerning the provision of care and services to residents. A 8 9 resident shall not be listed in the database until a Department 10 survey confirms the accuracy of the listing. The names of 11 persons listed in the database and information that would allow them to be individually identified shall not be made public. 12 13 Neither the Department nor any other agency of State government 14 may use information in the database to take any action against 15 individual, licensee, or other entity, unless 16 Department or agency receives the information independent of this subsection (e). All information collected, maintained, or 17 developed under the authority of this subsection (e) for the 18 19 purposes of the database maintained under this subsection (e) 20 shall be treated in the same manner as information that is subject to Part 21 of Article VIII of the Code of Civil 21 22 Procedure.
- 23 (Source: P.A. 96-1372, eff. 7-29-10; 97-48, eff. 6-28-11.)
- Section 10. The Health Care Worker Background Check Act is amended by changing Sections 15, 33, and 50 and by adding

### 1 Section 37 as follows:

- 2 (225 ILCS 46/15)
- 3 Sec. 15. Definitions. In this Act:
- 4 "Applicant" means an individual seeking employment with a
- 5 health care employer who has received a bona fide conditional
- 6 offer of employment.
- 7 "Conditional offer of employment" means a bona fide offer
- 8 of employment by a health care employer to an applicant, which
- 9 is contingent upon the receipt of a report from the Department
- of Public Health indicating that the applicant does not have a
- 11 record of conviction of any of the criminal offenses enumerated
- in Section 25.
- "Direct care" means the provision of nursing care or
- 14 assistance with feeding, dressing, movement, bathing,
- toileting, or other personal needs, including home services as
- defined in the Home Health, Home Services, and Home Nursing
- 17 Agency Licensing Act. The entity responsible for inspecting and
- licensing, certifying, or registering the health care employer
- 19 may, by administrative rule, prescribe guidelines for
- 20 interpreting this definition with regard to the health care
- 21 employers that it licenses.
- "Disqualifying offenses" means those offenses set forth in
- 23 Section 25 of this Act.
- "Employee" means any individual hired, employed, or
- retained to which this Act applies.

1	"Fingerprint-based criminal history records check" means a
2	<u>live scan</u> <u>livescan</u> fingerprint-based criminal history records
3	check submitted as a fee applicant inquiry in the form and
4	manner prescribed by the Department of State Police.
5	"Health care employer" means:
6	(1) the owner or licensee of any of the following:
7	(i) a community living facility, as defined in the
8	Community Living Facilities Act;
9	(ii) a life care facility, as defined in the Life
10	Care Facilities Act;
11	(iii) a long-term care facility;
12	(iv) a home health agency, home services agency, or
13	home nursing agency as defined in the Home Health, Home
14	Services, and Home Nursing Agency Licensing Act;
15	(v) a hospice care program or volunteer hospice
16	program, as defined in the Hospice Program Licensing
17	Act;
18	(vi) a hospital, as defined in the Hospital
19	Licensing Act;
20	(vii) (blank);
21	(viii) a nurse agency, as defined in the Nurse
22	Agency Licensing Act;
23	(ix) a respite care provider, as defined in the
24	Respite Program Act;
25	(ix-a) an establishment licensed under the
26	Assisted Living and Shared Housing Act;

1	(x) a supportive living program, as defined in the
2	Illinois Public Aid Code;
3	(xi) early childhood intervention programs as
4	described in 59 Ill. Adm. Code 121;
5	(xii) the University of Illinois Hospital,
6	Chicago;
7	(xiii) programs funded by the Department on Aging
8	through the Community Care Program;
9	(xiv) programs certified to participate in the
10	Supportive Living Program authorized pursuant to
11	Section 5-5.01a of the Illinois Public Aid Code;
12	(xv) programs listed by the Emergency Medical
13	Services (EMS) Systems Act as Freestanding Emergency
14	Centers;
15	(xvi) locations licensed under the Alternative
16	Health Care Delivery Act;
17	(2) a day training program certified by the Department
18	of Human Services;
19	(3) a community integrated living arrangement operated
20	by a community mental health and developmental service
21	agency, as defined in the Community-Integrated Living
22	Arrangements Licensing and Certification Act; or
23	(4) the State Long Term Care Ombudsman Program,
24	including any regional long term care ombudsman programs
25	under Section 4.04 of the Illinois Act on the Aging, only
26	for the purpose of securing background checks.

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"Initiate" means obtaining from a student, applicant, or employee his or her social security number, demographics, a disclosure statement, and an authorization for the Department of Public Health or its designee to request a fingerprint-based criminal history records check; transmitting this information electronically to the Department of Public Health; conducting 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 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 conducting similar searches as defined by rule; and having the student, applicant, or employee's fingerprints collected and transmitted electronically to the Department of State Police.

"Live scan Livescan vendor" means an entity whose equipment has been certified by the Department of State Police to collect an individual's demographics and inkless fingerprints and, in a manner prescribed by the Department of State Police and the Department of Public Health, electronically transmit the fingerprints and required data to the Department of State Police and a daily file of required data to the Department of Public Health. The Department of Public Health shall negotiate

administrative rule.

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- 1 more vendors that effecti with one 2 demonstrate that the vendor has 2 or more years of experience 3 transmitting fingerprints electronically to the Department of 4 State Police and that the vendor can successfully transmit the 5 required data in a manner prescribed by the Department of Public Health. Vendor authorization may be further defined by 6
- 8 "Long-term care facility" means a facility licensed by the 9 State or certified under federal law as a long-term care 10 facility, including without limitation facilities licensed 11 under the Nursing Home Care Act, the Specialized Mental Health Rehabilitation Act, or the ID/DD Community Care Act, a 12 13 supportive living facility, an assisted living establishment, or a shared housing establishment or registered as a board and 14 15 care home.
- (Source: P.A. 96-339, eff. 7-1-10; 97-38, eff. 6-28-11; 97-227, 16 eff. 1-1-12; 97-813, eff. 7-13-12.) 17
- 18 (225 ILCS 46/33)
- 19 Sec. 33. Fingerprint-based criminal history records check.
- (a) A fingerprint-based criminal history records check is 2.0 21 not required for health care employees who have been continuously employed by a health care employer since October 22 1, 2007, have met the requirements for criminal history 23 24 background checks prior to October 1, 2007, and have no 25 disqualifying convictions or requested and received a waiver of

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those disqualifying convictions. These employees shall be retained on the Health Care Worker Registry as long as they remain active. Nothing in this subsection (a) shall be construed to prohibit a health care employer from initiating a criminal history records check for these employees. Should these employees seek a new position with a different health care employer, then a fingerprint-based criminal history records check shall be required.

(b) On October 1, 2007 or as soon thereafter as reasonably practical, in the discretion of the Director of Public Health, and thereafter, any student, applicant, or employee who desires to be included on the Department of Public Health's Health Care Worker Registry must 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. This authorization shall allow the Department of Public Health to request and receive information and assistance from any State or local governmental agency. Each individual shall submit his or her fingerprints to the Department of State Police in an electronic format that complies with the form and manner for requesting and furnishing criminal history record information prescribed by the Department of State Police. The fingerprints submitted under this Section shall be checked against the fingerprint records now and hereafter filed in the Department of State Police criminal history record databases.

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- The Department of State Police shall charge a fee for conducting the criminal history records check, which shall not exceed the actual cost of the records check. The <u>live scan</u> livesean vendor may act as the designee for individuals, educational entities, or health care employers collection of Department of State Police fees and deposit those fees into the State Police Services Fund. The Department of State Police shall provide information concerning any criminal convictions, now or hereafter filed, against the individual.
  - (c) On October 1, 2007 or as soon thereafter as is reasonably practical, in the discretion of the Director of Public Health, and thereafter, an educational entity, other than a secondary school, conducting a nurse aide training program must initiate a fingerprint-based criminal history records check requested by the Department of Public Health prior to entry of an individual into the training program.
  - (d) On October 1, 2007 or as soon thereafter as is reasonably practical, in the discretion of the Director of Public Health, and thereafter, a health care employer who makes a conditional offer of employment to an applicant for a position as an employee must initiate a fingerprint-based criminal history record check, requested by the Department of Public Health, on the applicant, if such a background check has not been previously conducted.
- (e) When initiating a background check requested by the Department of Public Health, an educational entity or health

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care employer 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. The student, applicant, or employee must have his or her fingerprints collected electronically and transmitted to the Department of State Police within 10 working days. The educational entity or health care employer must transmit all necessary information and fees to the live scan <del>livescan</del> vendor and Department of State Police within 10 working days after receipt of the authorization. This information and the results of the criminal history record checks shall be maintained by the Department of Public Health's Health Care Worker Registry.

- (f) A direct care employer may initiate a fingerprint-based background check requested by the Department of Public Health for any of its employees, but may not use this process to initiate background checks for residents. The results of any fingerprint-based background check that is initiated with the Department as the requestor shall be entered in the Health Care Worker Registry.
- (g) As long as the employee has had a fingerprint-based criminal history record check requested by the Department of Public Health and stays active on the Health Care Worker Registry, no further criminal history record checks shall be deemed necessary, as the Department of State Police shall

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notify the Department of Public Health of any additional convictions associated with the fingerprints previously submitted. Health care employers are required to check the Health Care Worker Registry before hiring an employee to determine that the individual has had a fingerprint-based record check requested by the Department of Public Health and has no disqualifying convictions or has been granted a waiver pursuant to Section 40 of this Act. If the individual has not had such a background check or is not active on the Health Care Worker Registry, then the health care employer must initiate a fingerprint-based record check requested by the Department of Public Health. If an individual is inactive on the Health Care Worker Registry, that individual is prohibited from being hired to work as a certified nurse aide if, since the individual's most recent completion of a competency test, there has been a period of 24 consecutive months during which the individual has not provided nursing or nursing-related services for pay. 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 nurse aide and that employment information shall be entered into the Health Care Worker Registry.

(h) On October 1, 2007 or as soon thereafter as reasonably practical, in the discretion of the Director of Public Health, and thereafter, if the Department of State Police notifies the Department of Public Health that an

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1 employee has a new conviction of a disqualifying offense, based 2 upon the fingerprints that were previously submitted, then (i) 3 the Health Care Worker Registry shall notify the employee's 4 last known employer of the offense, (ii) a record of the 5 employee's disqualifying offense shall be entered on the Health 6 Care Worker Registry, and (iii) the individual shall no longer be eligible to work as an employee unless he or she obtains a 7 8 waiver pursuant to Section 40 of this Act.

- (i) On October 1, 2007, or as soon thereafter, in the discretion of the Director of Public Health, as is reasonably practical, and thereafter, each direct care employer or its designee must provide an employment verification for each employee no less than annually. The direct care employer or its designee must log into the Health Care Worker Registry through a secure login. The health care employer or its designee must indicate employment and termination dates within 30 days after hiring or terminating an employee, as well as the employment category and type. Failure to comply with this subsection (i) constitutes a licensing violation. For health care employers that are not licensed or certified, a fine of up to \$500 may be imposed for failure to maintain these records. This information shall be used by the Department of Public Health to notify the last known employer of any disqualifying offenses that are reported by the Department of State Police.
- (j) The Department of Public Health shall notify each health care employer or long-term care facility inquiring as to

- 1 the information on the Health Care Worker Registry if the
- employee 2 applicant or listed on the registry has
- disqualifying offense and is therefore ineligible to work or 3
- 4 has a waiver pursuant to Section 40 of this Act.
- 5 (k) The student, applicant, or employee must be notified of
- each of the following whenever a fingerprint-based criminal 6
- history records check is required: 7
- (1) That the educational entity, health care employer, 8
- 9 or long-term care facility shall initiate
- 10 fingerprint-based criminal history record check requested
- 11 by the Department of Public Health of the student,
- 12 applicant, or employee pursuant to this Act.
- 13 (2) That the student, applicant, or employee has a
- 14 right to obtain a copy of the criminal records report that
- 15 indicates a conviction for a disqualifying offense and
- 16 challenge the accuracy and completeness of the report
- 17 through an established Department of State
- 18 procedure of Access and Review.
- 19 (3) That the applicant, if hired conditionally, may be
- 20 terminated if the criminal records report indicates that
- the applicant has a record of a conviction of any of the 21
- 22 criminal offenses enumerated in Section 25, unless the
- 23 applicant obtains a waiver pursuant to Section 40 of this
- 24 Act.
- 25 (4) That the applicant, if not hired conditionally,
- 26 shall not be hired if the criminal records report indicates

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- 1 that the applicant has a record of a conviction of any of the criminal offenses enumerated in Section 25, unless the 2 3 applicant obtains a waiver pursuant to Section 40 of this 4 Act.
  - (5) That the employee shall be terminated if the criminal records report indicates that the employee has a record of a conviction of any of the criminal offenses enumerated in Section 25.
  - (6) If, after the employee has originally been determined not to have disqualifying offenses, the employer is notified that the employee has a new conviction(s) of any of the criminal offenses enumerated in Section 25, then the employee shall be terminated.
  - (1) A health care employer or long-term care facility may conditionally employ an applicant for up to 3 months pending the results of a fingerprint-based criminal history record check requested by the Department of Public Health.
  - The Department of Public Health or an (m) responsible for inspecting, licensing, certifying, registering the health care employer or long-term care facility shall be immune from liability for notices given based on the results of a fingerprint-based criminal history record check.
- (Source: P.A. 95-120, eff. 8-13-07.) 23
- 24 (225 ILCS 46/37 new)
- 25 Sec. 37. Live scan vendor fees. For live scan checks

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initiated on or after January 1, 2014, the Department shall establish fee schedules for live scan services that all live scan vendors offering live scan services under this Act and Section 2-201.5 of the Nursing Home Care Act shall follow. For the purposes of setting fees, the Department may divide the State into 2 or more regions and establish a different fee schedule for each region. Each fee schedule may provide for fees that are differentiated by the volume of services provided. No more than 4 vendors shall be selected by the Department for each region for participation under this Act, and those vendors shall be licensed as fingerprint vendors under Article 31 of the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004.

#### 15 (225 ILCS 46/50)

Sec. 50. Health care employer files. The health care employer shall retain on file for a period of 5 years records of criminal records requests for all employees. The health care employer shall retain a copy of the disclosure authorization forms, a copy of the live scan <del>livescan</del> request form, all notifications resulting from the fingerprint-based criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files shall be subject to inspection by the agency responsible for inspecting, licensing, or certifying the health care employer. A fine of up

- to \$500 may be imposed by the appropriate agency for failure to 1
- maintain these records. The Department of Public Health must 2
- 3 keep an electronic record of criminal history background checks
- 4 for an individual for as long as the individual remains active
- 5 on the Health Care Worker Registry.
- (Source: P.A. 95-120, eff. 8-13-07.) 6
- 7 Section 99. Effective date. This Act takes effect upon
- 8 becoming law.".