

AN ACT concerning regulation.

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

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

(225 ILCS 46/15)

Sec. 15. Definitions. In this Act:

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

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

"Department" means the Department of Public Health.

"Direct care" means the provision of nursing care or 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 Agency Licensing Act. The entity responsible for inspecting and

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

"Director" means the Director of Public Health.

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

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

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

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

"Health care employer" means:

- (1) the owner or licensee of any of the following:
 - (i) a community living facility, as defined in the Community Living Facilities Act;
 - (ii) a life care facility, as defined in the Life Care Facilities Act;
 - (iii) a long-term care facility;
 - (iv) a home health agency, home services agency, or home nursing agency as defined in the Home Health, Home Services, and Home Nursing Agency Licensing Act;

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

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

(vii) (blank);

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

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

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

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

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

(xii) the University of Illinois Hospital, Chicago;

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

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

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

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

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

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

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

"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 of Corrections Wanted Fugitives Search Engine, the National Sex Offender Public Registry, and the List of Excluded Individuals and Entities database on 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.

"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 a contract with one or more vendors that effectively demonstrate that the vendor has 2 or more years of experience transmitting fingerprints electronically to the Department of State Police and that the vendor can successfully transmit the required data in a manner prescribed by the Department of Public Health. Vendor authorization may be further defined by administrative rule.

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

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

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

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

(225 ILCS 46/33)

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

(a) A fingerprint-based criminal history records check is not required for health care employees who have been continuously employed by a health care employer since October 1, 2007, have met the requirements for criminal history background checks prior to October 1, 2007, and have no disqualifying convictions or requested and received a waiver of 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 is 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 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. This authorization shall allow the Department of Public Health to request and receive information and assistance from any State or 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. 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 livescan vendor may act as the designee for individuals, educational entities, or health care employers in the 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 shall initiate a fingerprint-based criminal history records check required by this Act 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 shall 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. 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.

(e) When initiating a background check requested by the Department of Public Health, an educational entity, ~~or~~ health care employer, 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. The student, applicant, or employee shall 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, 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. 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 required by this Act 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 requester shall be entered in the Health Care Worker Registry.

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

check the Health Care Worker Registry before hiring an employee to determine that the individual has had a fingerprint-based record check required by this Act 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 shall 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 nursing assistant 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 nursing assistant and that employment information shall be entered into the Health Care Worker Registry.

(h) On October 1, 2007 or as soon thereafter as is 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 employee has a new conviction of a disqualifying offense, based upon the fingerprints that were previously submitted, then (i) the Health Care Worker Registry shall notify the employee's

last known employer of the offense, (ii) a record of the employee's disqualifying offense shall be entered on the Health Care Worker Registry, and (iii) the individual shall no longer be eligible to work as an employee unless he or she obtains a 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 shall provide an employment verification for each employee no less than annually. The direct care employer or its designee shall log into the Health Care Worker Registry through a secure login. The health care employer or its designee shall 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. 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) In the event that an applicant or employee has a waiver for one or more disqualifying offenses pursuant to Section 40 of this Act and he or she is otherwise eligible to work, the Health Care Worker Registry shall indicate that the applicant or employee is eligible to work and that additional information is available on the Health Care Worker Registry. The Health

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

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

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

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

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

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

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.

(l) 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.

(m) The Department of Public Health or an entity responsible for inspecting, licensing, certifying, or 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.

(n) As used in this Section:

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

"Organizations providing pro bono legal services" means

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

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

(225 ILCS 46/40)

Sec. 40. Waiver.

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

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

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

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

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

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

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

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

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

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

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

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