



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5008

Introduced 2/7/2012, by Rep. Ann Williams

SYNOPSIS AS INTRODUCED:

210 ILCS 45/2-201.5
225 ILCS 46/15
225 ILCS 46/37 new

Amends the Health Care Worker Background Check Act. Provides that the Department of Public Health and the Department of State Police shall collaboratively establish a set fee for livescan services that all approved vendors offering livescan services under the Act and Nursing Home Care Act may not exceed. Provides that any livescan vendor meeting certain specified requirements shall be certified by the Department of State Police for participation. Provides that all participating livescan vendors shall comply with the established fee requirements within 30 days after being notified that a fee has been set. Makes other changes. Makes corresponding changes in the Nursing Home Care Act. Effective immediately.

LRB097 17038 CEL 62234 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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 Nursing Home Care Act is amended by changing
5 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
11 of income, assets, or funding source. Screening for nursing
12 facility services shall be administered through procedures
13 established by administrative rule. Screening may be done by
14 agencies other than the Department as established by
15 administrative rule. This Section applies on and after July 1,
16 1996. No later than October 1, 2010, the Department of
17 Healthcare and Family Services, in collaboration with the
18 Department on Aging, the Department of Human Services, and the
19 Department of Public Health, shall file administrative rules
20 providing for the gathering, during the screening process, of
21 information relevant to determining each person's potential
22 for placing other residents, employees, and visitors at risk of
23 harm.

1 (a-1) Any screening performed pursuant to subsection (a) of
2 this Section shall include a determination of whether any
3 person is being considered for admission to a nursing facility
4 due to a need for mental health services. For a person who
5 needs mental health services, the screening shall also include
6 an evaluation of whether there is permanent supportive housing,
7 or an array of community mental health services, including but
8 not limited to supported housing, assertive community
9 treatment, and peer support services, that would enable the
10 person to live in the community. The person shall be told about
11 the existence of any such services that would enable the person
12 to live safely and humanely and about available appropriate
13 nursing home services that would enable the person to live
14 safely and humanely, and the person shall be given the
15 assistance necessary to avail himself or herself of any
16 available services.

17 (a-2) Pre-screening for persons with a serious mental
18 illness shall be performed by a psychiatrist, a psychologist, a
19 registered nurse certified in psychiatric nursing, a licensed
20 clinical professional counselor, or a licensed clinical social
21 worker, who is competent to (i) perform a clinical assessment
22 of the individual, (ii) certify a diagnosis, (iii) make a
23 determination about the individual's current need for
24 treatment, including substance abuse treatment, and recommend
25 specific treatment, and (iv) determine whether a facility or a
26 community-based program is able to meet the needs of the

1 individual.

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

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

19 (a-3) The Department of Human Services, by rule, shall
20 provide for a prohibition on conflicts of interest for
21 pre-admission screeners. The rule shall provide for waiver of
22 those conflicts by the Department of Human Services if the
23 Department of Human Services determines that a scarcity of
24 qualified pre-admission screeners exists in a given community
25 and that, absent a waiver of conflicts, an insufficient number
26 of pre-admission screeners would be available. If a conflict is

1 waived, the pre-admission screener shall disclose the conflict
2 of interest to the screened individual in the manner provided
3 for by rule of the Department of Human Services. For the
4 purposes of this subsection, a "conflict of interest" includes,
5 but is not limited to, the existence of a professional or
6 financial relationship between (i) a PAS-MH corporate or a
7 PAS-MH agent and (ii) a community provider or long-term care
8 facility.

9 (b) In addition to the screening required by subsection
10 (a), a facility, except for those licensed as long term care
11 for under age 22 facilities, shall, within 24 hours after
12 admission, request a criminal history background check
13 pursuant to the Uniform Conviction Information Act for all
14 persons age 18 or older seeking admission to the facility,
15 unless a background check was initiated by a hospital pursuant
16 to subsection (d) of Section 6.09 of the Hospital Licensing
17 Act. Background checks conducted pursuant to this Section shall
18 be based on the resident's name, date of birth, and other
19 identifiers as required by the Department of State Police. If
20 the results of the background check are inconclusive, the
21 facility shall initiate a fingerprint-based check, unless the
22 fingerprint check is waived by the Director of Public Health
23 based on verification by the facility that the resident is
24 completely immobile or that the resident meets other criteria
25 related to the resident's health or lack of potential risk
26 which may be established by Departmental rule. A waiver issued

1 pursuant to this Section shall be valid only while the resident
2 is immobile or while the criteria supporting the waiver exist.
3 The facility shall provide for or arrange for any required
4 fingerprint-based checks to be taken on the premises of the
5 facility. If a fingerprint-based check is required, the
6 facility shall arrange for it to be conducted in a manner that
7 is respectful of the resident's dignity and that minimizes any
8 emotional or physical hardship to the resident. Livescan
9 vendors assisting in the initiation of fingerprint checks shall
10 comply with the provisions contained in Section 37 of the
11 Health Care Worker Background Check Act.

12 (c) If the results of a resident's criminal history
13 background check reveal that the resident is an identified
14 offender as defined in Section 1-114.01, the facility shall do
15 the following:

16 (1) Immediately notify the Department of State Police,
17 in the form and manner required by the Department of State
18 Police, in collaboration with the Department of Public
19 Health, that the resident is an identified offender.

20 (2) Within 72 hours, arrange for a fingerprint-based
21 criminal history record inquiry to be requested on the
22 identified offender resident. The inquiry shall be based on
23 the subject's name, sex, race, date of birth, fingerprint
24 images, and other identifiers required by the Department of
25 State Police. The inquiry shall be processed through the
26 files of the Department of State Police and the Federal

1 Bureau of Investigation to locate any criminal history
2 record information that may exist regarding the subject.
3 The Federal Bureau of Investigation shall furnish to the
4 Department of State Police, pursuant to an inquiry under
5 this paragraph (2), any criminal history record
6 information contained in its files.

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

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

17 (d) (Blank).

18 (e) The Department shall develop and maintain a
19 de-identified database of residents who have injured facility
20 staff, facility visitors, or other residents, and the attendant
21 circumstances, solely for the purposes of evaluating and
22 improving resident pre-screening and assessment procedures
23 (including the Criminal History Report prepared under Section
24 2-201.6) and the adequacy of Department requirements
25 concerning the provision of care and services to residents. A
26 resident shall not be listed in the database until a Department

1 survey confirms the accuracy of the listing. The names of
2 persons listed in the database and information that would allow
3 them to be individually identified shall not be made public.
4 Neither the Department nor any other agency of State government
5 may use information in the database to take any action against
6 any individual, licensee, or other entity, unless the
7 Department or agency receives the information independent of
8 this subsection (e). All information collected, maintained, or
9 developed under the authority of this subsection (e) for the
10 purposes of the database maintained under this subsection (e)
11 shall be treated in the same manner as information that is
12 subject to Part 21 of Article VIII of the Code of Civil
13 Procedure.

14 (Source: P.A. 96-1372, eff. 7-29-10; 97-48, eff. 6-28-11.)

15 Section 10. The Health Care Worker Background Check Act is
16 amended by changing Section 15 and by adding Section 37 as
17 follows:

18 (225 ILCS 46/15)

19 Sec. 15. Definitions. In this Act:

20 "Applicant" means an individual seeking employment with a
21 health care employer who has received a bona fide conditional
22 offer of employment.

23 "Conditional offer of employment" means a bona fide offer
24 of employment by a health care employer to an applicant, which

1 is contingent upon the receipt of a report from the Department
2 of Public Health indicating that the applicant does not have a
3 record of conviction of any of the criminal offenses enumerated
4 in Section 25.

5 "Direct care" means the provision of nursing care or
6 assistance with feeding, dressing, movement, bathing,
7 toileting, or other personal needs, including home services as
8 defined in the Home Health, Home Services, and Home Nursing
9 Agency Licensing Act. The entity responsible for inspecting and
10 licensing, certifying, or registering the health care employer
11 may, by administrative rule, prescribe guidelines for
12 interpreting this definition with regard to the health care
13 employers that it licenses.

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

16 "Employee" means any individual hired, employed, or
17 retained to which this Act applies.

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

22 "Health care employer" means:

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

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

26 (ii) a life care facility, as defined in the Life

- 1 Care Facilities Act;
- 2 (iii) a long-term care facility;
- 3 (iv) a home health agency, home services agency, or
4 home nursing agency as defined in the Home Health, Home
5 Services, and Home Nursing Agency Licensing Act;
- 6 (v) a hospice care program or volunteer hospice
7 program, as defined in the Hospice Program Licensing
8 Act;
- 9 (vi) a hospital, as defined in the Hospital
10 Licensing Act;
- 11 (vii) (blank);
- 12 (viii) a nurse agency, as defined in the Nurse
13 Agency Licensing Act;
- 14 (ix) a respite care provider, as defined in the
15 Respite Program Act;
- 16 (ix-a) an establishment licensed under the
17 Assisted Living and Shared Housing Act;
- 18 (x) a supportive living program, as defined in the
19 Illinois Public Aid Code;
- 20 (xi) early childhood intervention programs as
21 described in 59 Ill. Adm. Code 121;
- 22 (xii) the University of Illinois Hospital,
23 Chicago;
- 24 (xiii) programs funded by the Department on Aging
25 through the Community Care Program;
- 26 (xiv) programs certified to participate in the

1 Supportive Living Program authorized pursuant to
2 Section 5-5.01a of the Illinois Public Aid Code;

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

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

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

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

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

18 "Initiate" means obtaining from a student, applicant, or
19 employee his or her social security number, demographics, a
20 disclosure statement, and an authorization for the Department
21 of Public Health or its designee to request a fingerprint-based
22 criminal history records check; transmitting this information
23 electronically to the Department of Public Health; conducting
24 Internet searches on certain web sites, including without
25 limitation the Illinois Sex Offender Registry, the Department
26 of Corrections' Sex Offender Search Engine, the Department of

1 Corrections' Inmate Search Engine, the Department of
2 Corrections Wanted Fugitives Search Engine, the National Sex
3 Offender Public Registry, and the website of the Health and
4 Human Services Office of Inspector General to determine if the
5 applicant has been adjudicated a sex offender, has been a
6 prison inmate, or has committed Medicare or Medicaid fraud, or
7 conducting similar searches as defined by rule; and having the
8 student, applicant, or employee's fingerprints collected and
9 transmitted electronically to the Department of State Police.

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

25 "Long-term care facility" means a facility licensed by the
26 State or certified under federal law as a long-term care

1 facility, including without limitation facilities licensed
2 under the Nursing Home Care Act, the Specialized Mental Health
3 Rehabilitation Act, or the ID/DD Community Care Act, a
4 supportive living facility, an assisted living establishment,
5 or a shared housing establishment or registered as a board and
6 care home.

7 (Source: P.A. 96-339, eff. 7-1-10; 97-38, eff. 6-28-11; 97-227,
8 eff. 1-1-12; revised 10-4-11.)

9 (225 ILCS 46/37 new)

10 Sec. 37. Livescan vendor fees. The Department of Public
11 Health and the Department of State Police shall collaboratively
12 establish a set fee for livescan services that all approved
13 livescan vendors offering livescan services under this Act and
14 Section 2-201.5 of the Nursing Home Care Act may not exceed.
15 Any livescan vendor meeting the requirements set forth in this
16 Section shall be certified by the Department of State Police
17 for participation in both programs. Any vendor currently
18 providing livescan vendor services under the requirements of
19 this Act or the Nursing Home Care Act shall be notified within
20 30 days after the effective date of this amendatory Act of the
21 97th General Assembly of the provisions contained in this Act
22 and Section 2-201.5 of the Nursing Home Care Act and shall be
23 given 30 days after the date the livescan vendor is notified of
24 the established fee to notify the Department of State Police of
25 the livescan vendor's intent to seek certification. All

1 participating livescan vendors shall comply with the
2 established fee requirements within 30 days after being
3 notified that a fee has been set, regardless of the status of
4 their application for certification. Certification
5 qualifications shall include, but not be limited to, the
6 following:

7 (1) two or more years of experience transmitting
8 fingerprints electronically to the Department of State
9 Police;

10 (2) successful transmission of the required data in a
11 manner agreed on by the Department of Public Health and the
12 Department of State Police;

13 (3) licensure by the State as a fingerprint vendor
14 under the Private Detective, Private Alarm, Private
15 Security, Fingerprint Vendor, and Locksmith Act of 2004;
16 and

17 (4) an agreement to simultaneously provide livescan
18 services under multiple Acts.

19 All administrative rules adopted under this Section shall
20 be agreed upon by the Department of State Police and the
21 Department of Public Health.

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