



**93RD GENERAL ASSEMBLY**  
**State of Illinois**  
**2003 and 2004**

Introduced 02/09/04, by Kathleen A. Ryg

**SYNOPSIS AS INTRODUCED:**

225 ILCS 46/30  
225 ILCS 46/40  
225 ILCS 46/45  
225 ILCS 46/50  
225 ILCS 46/35 rep.

Amends the Health Care Worker Background Check Act. Provides that Uniform Conviction Information Act criminal history records checks and searches of the Federal Bureau of Investigation criminal history records database must be initiated for persons entering a nurse aid training program, persons seeking to be included on the nurse aide registry, and employees of health care workers with duties that involve direct care for clients, patients, or residents. Effective immediately.

LRB093 19938 AMC 45682 b

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT concerning health care workers.

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 30, 40, 45, and 50 as follows:

6 (225 ILCS 46/30)

7 Sec. 30. ~~Non fingerprint based UCIA~~ Criminal records  
8 check.

9 (a) ~~Beginning on January 1, 1997,~~ An educational entity,  
10 other than a secondary school, conducting a nurse aide training  
11 program must initiate a UCIA criminal history records check and  
12 have a search of the Federal Bureau of Investigation criminal  
13 history records database conducted prior to entry of an  
14 individual into the training program. A nurse aide seeking to  
15 be included on the nurse aide registry shall authorize the  
16 Department of Public Health or its designee that tests nurse  
17 aides or the health care employer or its designee to request  
18 the a criminal history record check pursuant to this Section  
19 ~~the Uniform Conviction Information Act (UCIA)~~ for each nurse  
20 aide applying for inclusion on the State nurse aide registry.  
21 Any nurse aide not submitting the required authorization and  
22 information for the record check will not be added to the State  
23 nurse aide registry. A nurse aide will not be entered on the  
24 State nurse aide registry if the results of the record check  
25 indicate ~~report from the Department of State Police indicates~~  
26 that the nurse aide has a record of conviction of any of the  
27 criminal offenses enumerated in Section 25 unless ~~the nurse~~  
28 ~~aide's identity is validated and it is determined that the~~  
29 ~~nurse aide does not have a disqualifying criminal history~~  
30 ~~record based upon a fingerprint based records check pursuant to~~  
31 ~~Section 35 or~~ the nurse aide receives a waiver pursuant to  
32 Section 40.

1 (b) The Department of Public Health shall notify each  
2 health care employer inquiring as to the information on the  
3 State nurse aide registry of the date of the nurse aide's last  
4 ~~UCIA~~ criminal history record check. If it has been more than  
5 one year since the records check, the health care employer must  
6 initiate or have initiated on his or her behalf a UCIA criminal  
7 history record check and have a search of the Federal Bureau of  
8 Investigation criminal history records database conducted for  
9 the nurse aide pursuant to this Section. The health care  
10 employer must send a copy of the results of the record check to  
11 the State nurse aide registry for an individual employed as a  
12 nurse aide.

13 (c) ~~Beginning January 1, 1996,~~ A health care employer who  
14 makes a conditional offer of employment to an applicant other  
15 than a nurse aide for position with duties that involve direct  
16 care for clients, patients, or residents must initiate or have  
17 initiated on his or her behalf a UCIA criminal history record  
18 check and have a search of the Federal Bureau of Investigation  
19 criminal history records database conducted for that  
20 applicant.

21 (d) ~~No later than January 1, 1997,~~ A health care employer  
22 must initiate or have initiated on his or her behalf a UCIA  
23 criminal history record check and have a search of the Federal  
24 Bureau of Investigation criminal history records database  
25 conducted for all employees other than those enumerated in  
26 subsections (a), (b), and (c) of this Section with duties that  
27 involve direct care for clients, patients, or residents. ~~A~~  
28 ~~health care employer having actual knowledge from a source~~  
29 ~~other than a non fingerprint check that an employee has been~~  
30 ~~convicted of committing or attempting to commit one of the~~  
31 ~~offenses enumerated in Section 25 of this Act must initiate a~~  
32 ~~fingerprint based background check within 10 working days of~~  
33 ~~acquiring that knowledge. The employer may continue to employ~~  
34 ~~that individual in a direct care position, may reassign that~~  
35 ~~individual to a non-direct care position, or may suspend the~~  
36 ~~individual until the results of the fingerprint based~~

1 ~~background check are received.~~

2 (e) The criminal history records check shall be undertaken  
3 after the fingerprinting of an applicant in the form and manner  
4 prescribed by the Department of State Police. The investigation  
5 shall consist of a criminal history records check performed by  
6 the Department of State Police and the Federal Bureau of  
7 Investigation, or some other entity that has the ability to  
8 check the applicant's fingerprints against the fingerprint  
9 records now and hereafter filed in the Department of State  
10 Police and Federal Bureau of Investigation criminal history  
11 records databases. The request for a UCIA criminal history  
12 ~~record check must be in the form prescribed by the Department~~  
13 ~~of State Police.~~

14 (f) The applicant or employee must be notified of the  
15 following whenever a criminal history records ~~non-fingerprint~~  
16 check is made:

17 (i) that the health care employer shall request or have  
18 requested on his or her behalf a UCIA criminal history  
19 record check and have a search of the Federal Bureau of  
20 Investigation criminal history records database conducted  
21 pursuant to this Act;

22 (ii) that the applicant or employee has a right to  
23 obtain a copy of the criminal records report from the  
24 health care employer, challenge the accuracy and  
25 completeness of the report, and request a waiver under  
26 Section 40 of this Act;

27 (iii) that the applicant, if hired conditionally, may  
28 be terminated if the criminal records report indicates that  
29 the applicant has a record of conviction of any of the  
30 criminal offenses enumerated in Section 25 ~~unless the~~  
31 ~~applicant's identity is validated and it is determined that~~  
32 ~~the applicant does not have a disqualifying criminal~~  
33 ~~history record based on a fingerprint-based records check~~  
34 ~~pursuant to Section 35.~~

35 (iv) that the applicant, if not hired conditionally,  
36 shall not be hired if the criminal records report indicates

1 that the applicant has a record of conviction of any of the  
2 criminal offenses enumerated in Section 25 ~~unless the~~  
3 ~~applicant's record is cleared based on a fingerprint based~~  
4 ~~records check pursuant to Section 35.~~

5 (v) that the employee may be terminated if the criminal  
6 records report indicates that the employee has a record of  
7 conviction of any of the criminal offenses enumerated in  
8 Section 25 ~~unless the employee's record is cleared based on~~  
9 ~~a fingerprint based records check pursuant to Section 35.~~

10 (g) A health care employer may conditionally employ an  
11 applicant to provide direct care for up to 3 months pending the  
12 results of a ~~UCIA~~ criminal history record check under this  
13 Section.

14 (h) An employer need not initiate an additional criminal  
15 background check for an employee if the employer initiated a  
16 criminal background history records check for the employee  
17 within one year before the effective date of this amendatory  
18 Act of the 93rd General Assembly. Any person newly employed on  
19 or after the effective date of this amendatory Act of the 93rd  
20 General Assembly must receive a background check as required by  
21 this Section.

22 (Source: P.A. 91-598, eff. 1-1-00.)

23 (225 ILCS 46/40)

24 Sec. 40. Waiver.

25 (a) (Blank). ~~An applicant, employee, or nurse aide may~~  
26 ~~request a waiver of the prohibition against employment by~~  
27 ~~submitting the following information to the entity responsible~~  
28 ~~for inspecting, licensing, certifying, or registering the~~  
29 ~~health care employer within 5 working days after the receipt of~~  
30 ~~the criminal records report:~~

31 ~~(1) Information necessary to initiate a~~  
32 ~~fingerprint based UCIA criminal records check in a form and~~  
33 ~~manner prescribed by the Department of State Police; and~~

34 ~~(2) The fee for a fingerprint based UCIA criminal~~  
35 ~~records check, which shall not exceed the actual cost of~~

1 ~~the record check.~~

2 (a-5) (Blank). ~~The entity responsible for inspecting,~~  
3 ~~licensing, certifying, or registering the health care employer~~  
4 ~~may accept the results of the fingerprint-based UCIA criminal~~  
5 ~~records check instead of the items required by paragraphs (1)~~  
6 ~~and (2) of subsection (a).~~

7 (b) The entity responsible for inspecting, licensing,  
8 certifying, or registering the health care employer may grant a  
9 waiver based upon any mitigating circumstances, which may  
10 include, but need not be limited to:

11 (1) The age of the individual at which the crime was  
12 committed;

13 (2) The circumstances surrounding the crime;

14 (3) The length of time since the conviction;

15 (4) The applicant or employee's criminal history since  
16 the conviction;

17 (5) The applicant or employee's work history;

18 (6) The applicant or employee's current employment  
19 references;

20 (7) The applicant or employee's character references;

21 (8) Nurse aide registry records; and

22 (9) Other evidence demonstrating the ability of the  
23 applicant or employee to perform the employment  
24 responsibilities competently and evidence that the  
25 applicant or employee does not pose a threat to the health  
26 or safety of residents, patients, or clients.

27 (c) The entity responsible for inspecting, licensing,  
28 certifying, or registering a health care employer must inform  
29 the health care employer if a waiver is being sought and must  
30 act upon the waiver request within 30 days of receipt of all  
31 necessary information, as defined by rule.

32 (d) An individual shall not be employed in a direct care  
33 position from the time that the employer receives the results  
34 of a criminal history records ~~non-fingerprint~~ check containing  
35 disqualifying conditions until the time that the individual  
36 receives a waiver from the Department. ~~If the individual~~

1 ~~challenges the results of the non-fingerprint check, the~~  
2 ~~employer may continue to employ the individual in a direct care~~  
3 ~~position if the individual presents convincing evidence to the~~  
4 ~~employer that the non-fingerprint check is invalid. If the~~  
5 ~~individual challenges the results of the non-fingerprint~~  
6 ~~check, his or her identity shall be validated by a~~  
7 ~~fingerprint based records check in accordance with Section 35.~~

8 (e) The entity responsible for inspecting, licensing,  
9 certifying, or registering the health care employer shall be  
10 immune from liability for any waivers granted under this  
11 Section.

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

15 (Source: P.A. 91-598, eff. 1-1-00.)

16 (225 ILCS 46/45)

17 Sec. 45. Application fees. Except as otherwise provided in  
18 this Act, the applicant or employee, other than a nurse aide,  
19 may be required to pay all related application and  
20 fingerprinting fees including, but not limited to, the amounts  
21 required ~~established by the UCIA to conduct UCIA criminal~~  
22 ~~history record checks and the amounts established by the~~  
23 ~~Department of State Police to process the fingerprint-based~~  
24 ~~UCIA criminal records checks~~ required by this Act. If a health  
25 care employer certified to participate in the Medicaid program  
26 pays the fees, the fees shall be a direct pass-through on the  
27 cost report submitted by the employer to the Medicaid agency.

28 (Source: P.A. 89-197, eff. 7-21-95.)

29 (225 ILCS 46/50)

30 Sec. 50. Health care employer files. The health care  
31 employer shall retain on file for a period of 5 years records  
32 of criminal records requests for all employees. The health care  
33 employer shall retain the results of the ~~UCIA~~ criminal history  
34 records check and waiver, if appropriate, for the duration of

1 the individual's employment. The files shall be subject to  
2 inspection by the agency responsible for inspecting,  
3 licensing, or certifying the health care employer. A fine of up  
4 to \$500 may be imposed by the appropriate agency for failure to  
5 maintain these records.

6 (Source: P.A. 89-197, eff. 7-21-95; 89-674, eff. 8-14-96.)

7 (225 ILCS 46/35 rep.)

8 Section 10. The Health Care Worker Background Check Act is  
9 amended by repealing Section 35.

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