

**HEALTH CARE WORKER BACKGROUND CHECK ACT
(225 ILCS 46/25, 40, 55, 60)****Sec. 25. Hiring of people with criminal records by health care employers and long-term care facilities.**

- (a) A health care employer or long-term care facility may hire, employ, or retain any individual in a position involving direct care for clients, patients, or residents, or access to the living quarters or the financial, medical, or personal records of clients, patients, or residents who has been convicted of committing or attempting to commit one or more of the following offenses only with a waiver described in Section 40: those defined in Sections 8-1(b), 8-1.1, 8-1.2, 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, 9-3.3, 9-3.4, 10-1, 10-2, 10-3, 10-3.1, 10-4, 10-5, 10-7, 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-6, 11-9.1, 11-9.2, 11-9.3, 11-9.4-1, 11-9.5, 11-19.2, 11-20.1, 11-20.1B, 11-20.3, 12-1, 12-2, 12-3.05, 12-3.1, 12-3.2, 12-3.3, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, 12-4.7, 12-7.4, 12-11, 12-13, 12-14, 12-14.1, 12-15, 12-16, 12-19, 12-20.5, 12-21, 12-21.5, 12-21.6, 12-32, 12-33, 12C-5, 12C-10, 16-1, 16-1.3, 16-25, 16A-3, 17-3, 17-56, 18-1, 18-2, 18-3, 18-4, 18-5, 19-1, 19-3, 19-4, 19-6, 20-1, 20-1.1, 24-1, 24-1.2, 24-1.5, 24-1.8, 24-3.8, or 33A-2, or subdivision (a)(4) of Section 11-14.4, or in subsection (a) of Section 12-3 or subsection (a) or (b) of Section 12-4.4a, of the Criminal Code of 1961 or the Criminal Code of 2012; those provided in Section 4 of the Wrongs to Children Act; those provided in Section 53 of the Criminal Jurisprudence Act; those defined in subsection (c), (d), (e), (f), or (g) of Section 5 or Section 5.1, 5.2, 7, or 9 of the Cannabis Control Act; those defined in the Methamphetamine Control and Community Protection Act; those defined in Sections 401, 401.1, 404, 405, 405.1, 407, or 407.1 of the Illinois Controlled Substances Act; or subsection (a) of Section 3.01, Section 3.02, or Section 3.03 of the Humane Care for Animals Act.
- (a-1) A health care employer or long-term care facility may hire, employ, or retain any individual in a position involving direct care for clients, patients, or residents, or access to the living quarters or the financial, medical, or personal records of clients, patients, or residents who has been convicted of committing or attempting to commit one or more of the following offenses only with a waiver described in Section 40: those offenses defined in Section 12-3.3, 12-4.2-5, 16-2, 16-30, 16G-15, 16G-20, 17-33, 17-34, 17-36, 17-44, 18-5, 20-1.2, 24-1.1, 24-1.2-5, 24-1.6, 24-3.2, or 24-3.3, or subsection (b) of Section 17-32, subsection (b) of Section 18-1, or subsection (b) of Section 20-1, of the Criminal Code of 1961 or the Criminal Code of 2012; Section 4, 5, 6, 8, or 17.02 of the Illinois Credit Card and Debit Card Act; or Section 11-9.1A of the Criminal Code of 1961 or the Criminal Code of 2012 or Section 5.1 of the Wrongs to Children Act; or (ii) violated Section 50-50 of the Nurse Practice Act.

A health care employer is not required to retain an individual in a position with duties involving direct care for clients, patients, or residents, and no long-term care facility is required to retain an individual in a position with duties that involve or may involve contact with residents or access to the living quarters or the financial, medical, or personal records of residents, who has been convicted of committing or attempting to commit one or more of the offenses enumerated in this subsection.

- (b) A health care employer shall not hire, employ, or retain, whether paid or on a volunteer basis, any individual in a position with duties involving direct care of clients, patients, or residents, and no long-term care facility shall knowingly hire, employ, or retain, whether paid or on a volunteer basis, any individual in a position with duties that involve or may involve contact with residents or access to the living quarters or the financial, medical, or personal records of residents, if the health care employer becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as an offense listed in subsection (a) or (a-1), as verified by court records, records from a state agency, or an FBI criminal history record check, unless the applicant or employee obtains a waiver pursuant to Section 40 of this Act. This shall not be construed to mean that a health care employer has an obligation to conduct a criminal history records check in other states in which an employee has resided.
- (c) A health care employer shall not hire, employ, or retain, whether paid or on a volunteer basis, any individual in a position with duties involving direct care of clients, patients, or residents, who has a finding by the Department of abuse, neglect, misappropriation of property, or theft denoted on the Health Care Worker Registry.
- (d) A health care employer shall not hire, employ, or retain, whether paid or on a volunteer basis, any individual in a position with duties involving direct care of clients, patients, or residents if the individual has a verified and substantiated finding of abuse, neglect, or financial exploitation, as identified within the Adult Protective Service Registry established under Section 7.5 of the Adult Protective Services Act.

- (e) A health care employer shall not hire, employ, or retain, whether paid or on a volunteer basis, any individual in a position with duties involving direct care of clients, patients, or residents who has a finding by the Department of Human Services of physical or sexual abuse, financial exploitation, or egregious neglect of an individual denoted on the Health Care Worker Registry.

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

Sec. 40. Waiver

- (a) Any student, applicant, 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. 100-432, eff. 8-25-17; 101-176, eff. 7-31-19.)

Sec. 55. Immunity from liability

A health care employer shall not be liable for the failure to hire or to retain an applicant or employee who has been convicted of committing or attempting to commit one or more of the offenses enumerated in subsection (a) of Section 25 of this Act. However, if an employee is suspended from employment based on the results of a criminal background check conducted under this Act and the results prompting the suspension are subsequently found to be inaccurate, the employee is entitled to recover backpay from his or her health care employer for the suspension period provided that the employer is the cause of the inaccuracy. The Department of Public Health is not liable for any hiring decisions, suspensions, or terminations.

No health care employer shall be chargeable for any benefit charges that result from the payment of unemployment benefits to any claimant when the claimant's separation from that employer occurred because the claimant's criminal background included an offense enumerated in subsection (a) of Section 25, or the claimant's separation from that health care employer occurred as a result of the claimant violating a policy that the employer was required to maintain pursuant to the Drug Free Workplace Act.

(Source: P.A. 95-120, eff. 8-13-07.)

Sec. 60. Offense

- (a) Any person whose profession is job counseling who knowingly counsels any person who has been convicted of committing or attempting to commit any of the offenses enumerated in subsection (a) of Section 25 to apply for a position with duties involving direct contact with a client, patient, or resident of a health care employer or a position with duties that involve or may involve contact with residents or access to the living quarters or the financial, medical, or personal records of residents of a long-term care facility shall be guilty of a Class A misdemeanor unless a waiver is granted pursuant to Section 40 of this Act.
- (b) Subsection (a) does not apply to an individual performing official duties in connection with the administration of the State employment service described in Section 1705 of the Unemployment Insurance Act.

(Source: P.A. 95-120, eff. 8-13-07.)