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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT

Introduced By: Senator Michael J. McCaffrey

Date Introduced: April 26, 2012

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 42 of the General Laws entitled "STATE AFFAIRS AND
2 GOVERNMENT" is hereby amended by adding thereto the following chapter:

3 CHAPTER 9.4

4 CRIMINAL BACKGROUND CHECK ACT

5 **42-9.4-1. Definitions. – As used in this chapter:**

6 (1) "Adult" means a person eighteen (18) years of age or older.

7 (2) "Applicant" or "Direct Patient Access Applicant" means a person applying to be a
8 direct patient access employee at a covered facility or a person providing services under chapter
9 40-8.1.

10 (3) "Attorney General" means the attorney general of the state of Rhode Island, or his or
11 her designee.

12 (4) "Criminal Background Check" means a national criminal records check that shall
13 include fingerprints submitted to the federal bureau of investigation (FBI).

14 (5) "Conviction" means, in addition to judgments of conviction entered by a court
15 subsequent to a finding of guilty or a plea of guilty, those instances where the defendant has
16 entered a plea of nolo contendere and has received a sentence of probation and those instances
17 where a defendant has entered into a deferred sentence agreement.

18 (6) "Covered Facility" means:

19 (i) A nursing facility; a home nursing care provider; a home care provider; or a hospice

1 service that is or is required to be licensed, registered or certified with the state pursuant to
2 chapter 23-17;

3 (ii) An assisted living residence that is or is required to be licensed with the state pursuant
4 to chapter 23-17.4;

5 (iii) A nursing services agency that is or is required to be licensed with the state pursuant
6 to chapter 23-17.7.1;

7 (iv) Any facility or program licensed by the department of behavioral healthcare,
8 developmental disabilities and hospitals pursuant to chapter 40.1-24;

9 (v) Any facility or program operated by the department of behavioral healthcare,
10 developmental disabilities and hospitals; and

11 (vi) Any other long-term care facility or provider.

12 (7) “Day(s)” means calendar days.

13 (8) “Department” means the Rhode Island department of attorney general.

14 (9) “BCI” means the bureau of criminal identification of the department of attorney
15 general.

16 (10) “Direct Patient Access Employee” means:

17 (i) A person who has access to a patient or resident of a covered facility through
18 employment or through a contract with such covered facility and has duties that involve or may
19 involve one-on-one contact with a patient or resident of the covered facility; or

20 (ii) A person who has access to the belongings or funds of a patient or resident of a
21 covered facility through employment or through a contract with such covered facility.

22 (iii) These provisions do not include volunteers unless the volunteer has duties that are
23 equivalent to the duties of a direct patient access employee and those duties involve or may
24 involve one-on-one contact with a patient or resident of the covered facility.

25 (11) “EOHHS” means the Rhode Island executive office of health and human services, or
26 its designee.

27 (12) “Livescan Vendor” means an entity whose equipment has been certified by the
28 department to collect an individual’s demographics and inkless fingerprints and, in a manner
29 prescribed by the department, electronically transmit the fingerprints and a daily file of required
30 data to the department. The department shall negotiate a contract with one or more vendors that
31 effectively demonstrate that the vendor has demonstrated sufficient experience transmitting
32 fingerprints electronically to the department and that the vendor can successfully transmit the
33 required data in a manner prescribed by the department.

34 (13) “Long-term Care Facility or Provider” means a facility or provider that receives

1 payment for services under title XVIII or XIX of the Social Security Act and is:

2 (i) A long-term care hospital (as described in section 1886(d)(1)(B)(iv) of the Social
3 Security Act (42 U.S.C. 1395ww(d)(1)(B)(iv));

4 (ii) A provider of personal care services as defined in the state’s waiver under Title XIX
5 of the Social Security Act relating to the provision of home and community-based services;

6 (iii) A provider of adult day care; or

7 (iv) An intermediate care facility for the mentally retarded (as defined in section 1905(d)
8 of the Social Security Act (42 U.S.C. 1396d(d)).

9 (14) “Provisionally employed” means that the applicant is employed by a covered facility
10 or provides services as provided in chapter 40-8.1, during a period of time after the applicant’s
11 fingerprints have been submitted for the processing of a criminal background check, but before
12 the results of the criminal background check have been received. During this time, the applicant
13 shall not have supervisory or disciplinary power or routine contact with patients or residents
14 without the presence of others.

15 **42-9.4-2. Criminal Background Check.** – (a) Any adult person seeking employment in
16 any covered facility as a direct patient access employee or who provides services as a direct
17 patient access employee as provided in chapter 40-8.1, whether compensated or not, shall
18 undergo a criminal background check to be processed prior to employment or providing such
19 services, except as otherwise provided in this section. All persons who, as of January 1, 2013, are
20 already employed by a covered facility and all persons who, as of such date, already provide
21 services under chapter 40-8.1 shall be exempted from the requirements of this section for
22 purposes of their current employment only.

23 (b) The applicant shall apply to the BCI for a criminal background check. The BCI may
24 utilize a Livescan vendor as a designee to fulfill the requirements of this chapter.

25 (c) If the results of the criminal background check have not been received within seven
26 (7) days, upon verification that an applicant has submitted his or her fingerprints for the
27 processing of a criminal background check, the applicant may be provisionally employed by the
28 covered facility or provide services under chapter 40-8.1 until the results of the criminal
29 background check are completed, but in no case may this exceed sixty (60) days.

30 (d) Upon the discovery of any disqualifying information, as defined in section 42-9.4-3
31 and in accordance with the rules and regulations promulgated by the department, the BCI shall
32 inform the applicant of the nature of the disqualifying information; and, without disclosing the
33 nature of the disqualifying information, shall notify the covered facility that disqualifying
34 information has been discovered. The disqualification notice shall include notice of the

1 applicant's right to appeal the denial or termination of employment and that the applicant may
2 request an appeal of denial or termination of employment as provided in section 42-9.4-4. If a
3 covered facility provisionally employed an applicant as provided in subsection (c), upon the
4 covered facility's receipt of the disqualification notice, the covered facility must terminate the
5 applicant's employment within fourteen (14) days, unless the applicant requests an appeal in
6 accordance with section 42-9.4-4 and, in doing so, requests to remain provisionally employed
7 while the appeal is reviewed. Upon receipt of an applicant's request to remain provisionally
8 employed during the appeal process, the department or the EOHHS shall inform the relevant
9 covered facility that the disqualified individual has requested an appeal and advise the covered
10 facility that the individual may remain provisionally employed until the date the covered facility
11 receives the department's or EOHHS's written decision or until the applicant has been employed
12 for sixty (60) days, whichever date is earlier. In those situations in which no disqualifying
13 information has been found, the BCI shall inform the applicant, the covered facility, and EOHHS
14 of this fact.

15 (e) The covered facility shall initiate a criminal background check on all direct patient
16 access applicants, the results of which will be maintained by the BCI. Failure to initiate criminal
17 background checks on any prospective direct patient access employee would be grounds to
18 revoke the license or registration of the covered facility. The covered facility shall maintain on
19 file, subject to inspection by the EOHHS, evidence that criminal background checks have been
20 initiated on all direct patient access employees employed by or performing services at or for the
21 covered facility after the date specified in this subsection, and the results of such checks. Failure
22 to maintain that evidence would be grounds to revoke the license or registration of the covered
23 facility. The date specified in this subsection is either:

24 (1) October 1, 1991, if the covered facility is a nursing facility, a home nursing care
25 provider, a home care provider, or an assisted living residence; or

26 (2) January 1, 2013, if the covered facility is any other type of facility, program, or
27 provider.

28 (f) It shall be the responsibility of the applicant to pay for the criminal background check
29 fees. The fees shall be established by rules and regulations promulgated pursuant to section 42-
30 9.4-9 of this chapter.

31 **42-9.4-3. Disqualifying information.** – (a) Information produced by a criminal
32 background check pertaining to a conviction for the following crimes will disqualify the applicant
33 from employment:

34 (1) The following offenses are considered level one offenses: Murder, manslaughter, first

1 degree sexual assault, second degree sexual assault, assault on persons sixty (60) years of age or
2 older, assault with intent to commit specified felonies (murder, robbery, rape, burglary, or the
3 abominable and detestable crime against nature), felony assault, patient abuse, neglect or
4 mistreatment of patients, burglary, first degree arson, robbery, any felony involving the illegal
5 manufacture, sale or delivery of a controlled substance, or possession with intent to manufacture,
6 sell or deliver a controlled substance, felony obtaining money under false pretenses, felony
7 embezzlement, abuse, neglect and/or exploitation of adults with severe impairments, exploitation
8 of elders, felony larceny, or felony banking law violations, or a crime under section 1128(a) of
9 the Social Security Act (42 U.S.C. 1320a-7(a)).

10 (2) The following offenses are considered level two offenses: Felony drug possession and
11 third degree sexual assault.

12 **42-9.4-4. Appeal of Denial or Termination of Employment.** – (a) An applicant who
13 has been denied or terminated from employment due to receiving a disqualification notice may
14 appeal such denial or termination. The appeal procedure shall be dependent on whether the nature
15 of the disqualification is a level one or a level two offense.

16 (b) If the applicant’s disqualification is based on a level one offense, the appeal shall be
17 limited only to the accuracy of the information provided in the criminal background check.

18 (1) The applicant must submit a request for appeal in writing to the department within
19 (14) days of the applicant’s receipt of the disqualification notice provided in subsection 42-9.4-
20 2(d). In the request, the applicant must include a copy of his or her disqualification notice that
21 identifies the specific disqualifying offense and provide evidence that he or she was not convicted
22 of the disqualifying offense.

23 (2) Within thirty (30) days of receipt of the applicant’s request, the department shall
24 review the applicant’s submitted materials and conduct a hearing for the applicant to demonstrate
25 that the information contained in the disqualification notice was inaccurate.

26 (3) The department must deny the appeal if the applicant failed to submit a timely request
27 for appeal or if the applicant fails to demonstrate that the information contained in the
28 disqualification notice was inaccurate. Upon denial, the department shall notify, in writing, the
29 applicant, the covered facility, and EOHHS that the disqualification was not overturned due to the
30 information in the criminal background check being found accurate or because the applicant
31 failed to submit a timely request.

32 (4) The department shall overturn the disqualification if it finds that the information
33 provided in the criminal background check is inaccurate. If an applicant’s disqualification is
34 overturned, the department shall notify the applicant, the covered facility, and EOHHS of the

1 decision in writing. In such decision, the department must inform the applicant, the covered
2 facility, and EOHHS that the information relied upon to disqualify the applicant was inaccurate.

3 (c) If the applicant's disqualification is based on a level two offense, the appeal shall
4 consider whether the disqualification should be overturned due to any or some combination of the
5 following factors: the passage of time since the disqualifying conviction, extenuating
6 circumstances surrounding the disqualifying conviction, the applicant's demonstration of
7 rehabilitation and the relevancy of the disqualifying information to the employment applied for.

8 (1) The applicant must submit the request for appeal in writing to the EOHHS within
9 fourteen (14) days of the applicant's receipt of the disqualification notice provided in subsection
10 42-9.4-2(d). In the request, the applicant must include a copy of his or her disqualification notice
11 that identifies the specific disqualifying offense and provide evidence that supports the factors in
12 subsection (c).

13 (2) Within thirty (30) days of receipt of the applicant's request, the EOHHS shall review
14 the applicant's submitted materials and conduct a hearing for the applicant to demonstrate that the
15 disqualification should be overturned due to any or some combination of the factors in subsection
16 (c).

17 (3) Upon consideration of the factors in subsection (c), if EOHHS determines that the
18 applicant's disqualification should not be overturned or the applicant failed to submit a timely
19 request for appeal, the EOHHS must deny the appeal. Upon denial, the EOHHS shall notify, in
20 writing, the applicant, the covered facility, and the department that the disqualification was not
21 overturned and the basis for the denial.

22 (4) The EOHHS shall grant the appeal if it finds that the information contained in the
23 applicant's criminal background check and applicant's presentation of pertinent factors in
24 subsection (c) warrant that the applicant's disqualification should be overturned. If an applicant's
25 disqualification is overturned, the EOHHS shall notify the applicant, the covered facility, and the
26 department of the decision in writing and state the specific findings thereto.

27 **42-9.4-5. Automated Fingerprint Identification System Database.** - The department
28 may establish and maintain an automated fingerprint identification system database that would
29 allow the department to store and maintain all fingerprints submitted under this chapter and
30 would provide for an automatic notification if and when a subsequent criminal arrest fingerprint
31 card submitted into the system matches a set of fingerprints previously submitted under the
32 chapter. If the aforementioned arrest results in a conviction, the department shall immediately
33 notify each covered facility with which that individual is associated. The information in the
34 database established under this section is confidential and is not subject to disclosure under the

1 [access to public records act, chapter 2 of title 38 of the general laws.](#)

2 **42-9.4-6. Electronic Web-based Registry System.** – [The department or EOHHS shall](#)
3 [maintain an electronic web-based system to assist covered facilities required to check relevant](#)
4 [registries and conduct criminal background checks of direct patient access applicants and to](#)
5 [provide for an automated notice to those covered facilities for those persons inputted in the](#)
6 [system who, since the initial criminal background check, have been convicted of a disqualifying](#)
7 [offense or have been the subject of a substantiated finding of abuse, neglect or misappropriation](#)
8 [of property. The department or EOHHS may charge a covered facility a one-time set up fee of up](#)
9 [to one hundred dollars \(\\$100\) for access to the electronic web-based system under this section.](#)

10 **42-9.4-7. Immunity from liability.** – [The department, the EOHHS, and a covered](#)
11 [facility who disqualifies an applicant from employment or continued employment on the basis of](#)
12 [a disqualification notice as described in subsection 42-9.4-2\(d\) or of a criminal background check](#)
13 [relating to disqualifying information shall not be liable for civil damages or subject to any claim,](#)
14 [demand, cause of action, or proceeding of any nature as a result of the disqualification.](#)

15 **42-9.4-8. Rules and regulations.** – [The department and the EOHHS is authorized to](#)
16 [promulgate rules and regulations to carry out the intent of this chapter.](#)

17 SECTION 2. Section 23-17-34 of the General Laws in Chapter 23-17 entitled "Licensing
18 of Health Care Facilities" is hereby amended to read as follows:

19 **23-17-34. Criminal records review – Nursing facilities – Home nursing care**
20 **providers and home care providers.** – (a) Any [adult](#) person seeking employment [as a direct](#)
21 [patient access employee, whether compensated or not,](#) in a nursing facility, a home nursing care
22 provider, or a home care provider which is or is required to be licensed, registered or certified
23 with the department of health ~~if that employment involves routine contact with a patient or~~
24 ~~resident without the presence of other employees,~~ shall undergo a criminal background check [as](#)
25 [provided in chapter 42-9.4](#) ~~to be initiated prior to or within one week of employment. All~~
26 ~~employees hired prior to the enactment of this section shall be exempted from the requirements of~~
27 ~~this section.~~

28 (b) The director of the department of health may by rule identify those positions requiring
29 criminal background checks. ~~The identified employee, through the employer, shall apply to the~~
30 ~~bureau of criminal identification of the state police or local police department for a statewide~~
31 ~~criminal records check. Fingerprinting shall not be required. Upon the discovery of any~~
32 ~~disqualifying information as defined in § 23-17-37 and in accordance with the rule promulgated~~
33 ~~by the director of health, the bureau of criminal identification of the state police or the local~~
34 ~~police department will inform the applicant, in writing, of the nature of the disqualifying~~

1 ~~information; and, without disclosing the nature of the disqualifying information, will notify the~~
2 ~~employer, in writing, that disqualifying information has been discovered.~~

3 ~~(c) An employee against whom disqualifying information has been found may request~~
4 ~~that a copy of the criminal background report be sent to the employer who shall make a judgment~~
5 ~~regarding the continued employment of the employee.~~

6 ~~(d) In those situations in which no disqualifying information has been found, the bureau~~
7 ~~of criminal identification of the state police or the local police shall inform the applicant and the~~
8 ~~employer, in writing, of this fact.~~

9 ~~(c)(e)~~ The employer shall maintain on file, subject to inspection by the department of
10 health, evidence that criminal records checks have been initiated on all employees seeking
11 employment after October 1, 1991, and the results of the checks. Failure to maintain that evidence
12 would be grounds to revoke the license or registration of the employer.

13 ~~(f) It shall be the responsibility of the bureau of criminal identification of the state police~~
14 ~~or the local police department to conduct the criminal records check to the applicant for~~
15 ~~employment without charge to either the employee or the employer.~~

16 SECTION 3. Sections 23-17-37 and 23-17-39 of the General Laws in Chapter 23-17
17 entitled "Licensing of Health Care Facilities" are hereby repealed.

18 ~~**23-17-37. Disqualifying information.** -- (a) Information produced by a criminal records~~
19 ~~review pertaining to conviction, for the following crimes will result in a letter to the employee~~
20 ~~and employer disqualifying the applicant from employment: murder, voluntary manslaughter,~~
21 ~~involuntary manslaughter, first degree sexual assault, second degree sexual assault, third degree~~
22 ~~sexual assault, assault on persons sixty (60) years of age or older, assault with intent to commit~~
23 ~~specified felonies (murder, robbery, rape, burglary, or the abominable and detestable crime~~
24 ~~against nature) felony assault, patient abuse, neglect or mistreatment of patients, burglary, first~~
25 ~~degree arson, robbery, felony drug offenses, larceny, or felony banking law violations. An~~
26 ~~employee against whom disqualifying information has been found may request that a copy of the~~
27 ~~criminal background report be sent to the employer who shall make a judgment regarding the~~
28 ~~continued employment of the employee.~~

29 ~~(b) For purposes of this section, "conviction" means, in addition to judgments of~~
30 ~~conviction entered by a court subsequent to a finding of guilty or a plea of guilty, those instances~~
31 ~~where the defendant has entered a plea of nolo contendere and has received a sentence of~~
32 ~~probation and those instances where a defendant has entered into a deferred sentence agreement~~
33 ~~with the attorney general.~~

34 ~~**23-17-39. Immunity from liability.** -- No employer who disqualifies an individual from~~

1 ~~employment or continued employment within thirty (30) days of receipt of a letter containing~~
2 ~~disqualifying information as defined in section 23-17-37 or of a criminal background report~~
3 ~~relating to the individual shall be liable for civil damages or subject to any claim, demand, cause~~
4 ~~of action or proceeding of any nature as a result of the disqualification.~~

5 SECTION 4. Section 23-17.7.1-17 of the General Laws in Chapter 23-17.7.1 entitled
6 "Licensing of Nursing Service Agencies" is hereby amended to read as follows:

7 **23-17.7.1-17. Criminal records review.** – (a) Any adult person seeking employment as
8 a direct patient access employee, whether compensated or not, in a facility which is or is required
9 to be licensed or registered with the department of health ~~if that employment involves routine~~
10 ~~contact with a patient or resident without the presence of other employees,~~ shall undergo a
11 criminal background check as provided in chapter 42-9.4., ~~which shall be initiated prior to, or~~
12 ~~within one week of, employment. All employees hired prior to the enactment of this section shall~~
13 ~~be exempted from the requirements of this section.~~

14 (b) The director of the department of health may, by rule, identify those positions
15 requiring criminal background checks. ~~The employee, through the employer, shall apply to the~~
16 ~~bureau of criminal identification of the state police or local police department for a statewide~~
17 ~~criminal records check. Fingerprinting shall not be required. Upon the discovery of any~~
18 ~~disqualifying information as defined in § 23-17.7.1-20 and in accordance with the rule~~
19 ~~promulgated by the director of the department of health, the bureau of criminal identification of~~
20 ~~the state police or the local police department will inform the applicant, in writing, of the nature~~
21 ~~of the disqualifying information; and, without disclosing the nature of the disqualifying~~
22 ~~information, will notify the employer, in writing, that disqualifying information has been~~
23 ~~discovered.~~

24 (c) ~~An employee against whom disqualifying information under § 23-17.7.1-20(b) has~~
25 ~~been found may request that a copy of the criminal background report be sent to the employer~~
26 ~~who shall make a judgment regarding the continued employment of the employee.~~

27 (d) ~~In those situations in which no disqualifying information has been found, the bureau~~
28 ~~of criminal identification of the state police or the local police shall inform the applicant and the~~
29 ~~employer, in writing, of this fact.~~

30 (e) The employer shall maintain on file, subject to inspection by the department of health,
31 evidence that criminal records checks have been initiated on all employees. Failure to maintain
32 that evidence would be grounds to revoke the license or registration of the employer.

33 (f) ~~It shall be the responsibility of the bureau of criminal identification of the state police~~
34 ~~or the local police department to conduct the criminal records check to the applicant for~~

1 ~~employment without charge to either the employee or the employer.~~

2 SECTION 5. Sections 23-17.7.1-18, 23-17.7.1-20 and 23-17.7.1-21 of the General Laws
3 in Chapter 23-17.7.1 entitled "Licensing of Nursing Service Agencies" are hereby repealed.

4 ~~**23-17.7.1-18. Prior criminal records checks.** -- If an applicant for employment has
5 undergone a statewide criminal records check within eighteen (18) months of an application for
6 employment, then an employer may request from the bureau of criminal identification or local
7 police a letter indicating if any disqualifying information was discovered. The bureau of criminal
8 identification will respond without disclosing the nature of the disqualifying information. The
9 letter may be maintained on file to satisfy the requirements of this chapter.~~

10 ~~**23-17.7.1-20. Disqualifying information.** -- (a) Information produced by a criminal
11 records review pertaining to conviction, for the following crimes will result in a letter to the
12 employee and employer disqualifying the applicant from the employment: murder, voluntary
13 manslaughter, involuntary manslaughter, first degree sexual assault, second degree sexual assault,
14 third degree sexual assault, assault on persons sixty (60) years of age or older, assault with intent
15 to commit specified felonies (murder, robbery, rape, burglary, or the abominable and detestable
16 crime against nature), felony assault, patient abuse, neglect or mistreatment of patients, first
17 degree arson, robbery, felony drug offenses, larceny, or felony banking law violations.~~

18 ~~(b) Information produced by a criminal records review pertaining to convictions for
19 crimes other than those listed in subsection (a) of this section shall entitle, but not obligate the
20 employer to decline to hire the applicant. An employee against whom conviction information
21 related to this subsection has been found may request that a copy of the criminal background
22 report be sent to the employer who shall make a determination regarding the continued
23 employment of the employee.~~

24 ~~(c) For purposes of this section "conviction" means, in addition to judgments of
25 conviction entered by a court subsequent to a finding of guilty or a plea of guilty, those instances
26 where the defendant has entered a plea of nolo contendere and has received a sentence of
27 probation and those instances where a defendant has entered into a deferred sentence agreement
28 with the attorney general.~~

29 ~~**23-17.7.1-21. Immunity from liability.** -- No employer who disqualifies an individual
30 from employment or continued employment within thirty (30) days of receipt of a letter
31 containing disqualifying information as defined in section 23-17.7.1-20 or of a criminal
32 background report relating to that information shall be liable for civil damages or subject to any
33 claim, cause of action, or proceeding of any nature as a result of the disqualification.~~

34 SECTION 6. Section 23-17.4-27 of the General Laws in Chapter 23-17.4 entitled

1 "Assisted Living Residence Licensing Act" is hereby amended to read as follows:

2 **23-17.4-27. Criminal records review.** – (a) Any adult person seeking employment as a
3 direct patient access employee, whether compensated or not, in any assisted living residence
4 licensed under this act ~~and having routine contact with a resident or having access to a resident's~~
5 ~~belongings or funds shall undergo a criminal background check as provided in chapter 42-9.4 to~~
6 ~~be processed prior to or within one week of employment. All employees hired prior to the~~
7 ~~enactment of this section shall be exempted from the requirements of this section.~~

8 (b) The director of the department of health may by rule identify those positions requiring
9 criminal background checks. ~~The employee, through the employer, shall apply to the bureau of~~
10 ~~criminal identification of the state police or local police department for a statewide criminal~~
11 ~~records check. Fingerprinting shall not be required. Upon the discovery of any disqualifying~~
12 ~~information as defined in § 23-17.4-30 and in accordance with the rule promulgated by the~~
13 ~~director of health, the bureau of criminal identification of the state police or the local police~~
14 ~~department will inform the applicant in writing of the nature of the disqualifying information;~~
15 ~~and, without disclosing the nature of the disqualifying information, will notify the employer in~~
16 ~~writing that disqualifying information has been discovered.~~

17 (c) ~~An employee against whom disqualifying information has been found may request~~
18 ~~that a copy of the criminal background report be sent to the employer. The administrator shall~~
19 ~~make a judgment regarding the continued employment of the employee.~~

20 (d) ~~In those situations in which no disqualifying information has been found, the bureau~~
21 ~~of criminal identification (BCI) of the state police or the local police shall inform the applicant~~
22 ~~and the employer in writing of this fact.~~

23 (e) ~~The employer shall maintain on file, subject to inspection by the department of health,~~
24 ~~evidence that criminal records checks have been initiated on all employees seeking employment~~
25 ~~after October 1, 1991, and the results of the checks. Failure to maintain that evidence would be~~
26 ~~grounds to revoke the license or registration of the employer.~~

27 (f) ~~It shall be the responsibility of the bureau of criminal identification (BCI) of the state~~
28 ~~police or the local police department to conduct the criminal records check to the applicant for~~
29 ~~employment without charge to either the employee or employer.~~

30 SECTION 7. Sections 23-17.4-28, 23-17.4-30 and 23-17.4-32 of the General Laws in
31 Chapter 23-17.4 entitled "Assisted Living Residence Licensing Act" are hereby repealed.

32 **23-17.4-28. Prior criminal records checks.** -- ~~If an applicant for employment has~~
33 ~~undergone a statewide criminal records check within eighteen (18) months of an application for~~
34 ~~employment, then an employer may request from the bureau of criminal identification or local~~

1 ~~police a letter indicating if any disqualifying information was discovered. The bureau of criminal~~
2 ~~identification will respond without disclosing the nature of the disqualifying information. The~~
3 ~~letter may be maintained on file to satisfy the requirements of this chapter.~~

4 ~~**23-17.4-30. Disqualifying information.** -- (a) Information produced by a criminal~~
5 ~~records review pertaining to conviction, for the following crimes will result in a letter to the~~
6 ~~employee and employer disqualifying the applicant from employment: murder, voluntary~~
7 ~~manslaughter, involuntary manslaughter, first degree sexual assault, second degree sexual assault,~~
8 ~~third degree sexual assault, assault on persons sixty (60) years of age or older, assault with intent~~
9 ~~to commit specified felonies (murder, robbery, rape, burglary, or the abominable and detestable~~
10 ~~crime against nature) felony assault, patient abuse, neglect or mistreatment of patients, burglary,~~
11 ~~first degree arson, robbery, felony drug offenses, larceny or felony banking law violations. An~~
12 ~~employee against whom disqualifying information has been found may request that a copy of the~~
13 ~~criminal background report be sent to the employer who shall make a judgment regarding the~~
14 ~~continued employment of the employee.~~

15 ~~(b) For purposes of this section, "conviction" means, in addition to judgments of~~
16 ~~conviction entered by a court subsequent to a finding of guilty or a plea of guilty, those instances~~
17 ~~where the defendant has entered a plea of nolo contendere and has received a sentence of~~
18 ~~probation and those instances where a defendant has entered into a deferred sentence agreement~~
19 ~~with the attorney general.~~

20 ~~**23-17.4-32. Immunity from liability.** -- No employer who disqualifies an individual~~
21 ~~from employment or continued employment within thirty (30) days of receipt of a letter~~
22 ~~containing disqualifying information as defined in section 23-17.4-30 or of a criminal background~~
23 ~~report relating to disqualifying information shall be liable for civil damages or subject to any~~
24 ~~claim, demand, cause of action or proceeding of any nature as a result of the disqualification.~~

25 SECTION 8. Section 40.1-25.1-3 of the General Laws in Chapter 40.1-25.1 entitled
26 "Employee Criminal Records Check" is hereby amended to read as follows:

27 ~~**40.1-25.1-3. Criminal records check requirement.** -- (a) Any facility or program~~
28 ~~licensed by the department pursuant to § 40.1-24-1 et seq. and any facility or program operated~~
29 ~~by the department shall require all adult applicants for employment, as a direct patient access~~
30 ~~employee, whether compensated or not, if that employment involves routine contact with~~
31 ~~patients, residents or clients without the presence of other employees, to apply to the bureau of~~
32 ~~criminal identification of the state police or the local police department for a nationwide criminal~~
33 ~~records check for a criminal background check as provided in chapter 42-9.4. The check will~~
34 ~~conform to the applicable federal standards, including the taking of fingerprints of the applicant.~~

1 ~~(b) If any disqualifying information is discovered with respect to the applicant, the bureau~~
2 ~~of criminal identification of the state police or the local police department will inform the~~
3 ~~employer, in writing, without disclosing the nature of the disqualifying information, that an item~~
4 ~~of disqualifying nature has been discovered. In addition, the bureau of criminal identification of~~
5 ~~the state police or the local police department will inform the applicant, in writing, of the nature~~
6 ~~of the disqualifying information. An applicant against whom disqualifying information has been~~
7 ~~found may request that a copy of the criminal background report be sent to the employer who~~
8 ~~shall make a judgment regarding the employment of the applicant.~~

9 ~~(c) In those situations in which no disqualifying information has been found, the bureau~~
10 ~~of criminal identification of the state police or the local police department shall inform both the~~
11 ~~applicant and the employer of this fact.~~

12 ~~(d)~~ The employer will maintain on file, subject to investigation by the department,
13 evidence that criminal records checks in accordance with this statute have been initiated on all
14 employees seeking employment after August 1, 2001 and the results of the checks. Failure to
15 maintain the evidence on file will be prima facie grounds to revoke the license or certification of
16 the operator of any facility or program licensed or certified by the department.

17 ~~(e) It shall be the responsibility of the bureau of criminal identification of the state police~~
18 ~~or the local police department to conduct the national criminal records check for the applicant.~~

19 SECTION 9. Sections 40.1-25.1-4 and 40.1-25.1-5 of the General Laws in Chapter 40.1-
20 25.1 entitled "Employee Criminal Records Check" are hereby repealed.

21 ~~**40.1-25.1-4. Prior criminal records check.** -- If an applicant has undergone a national~~
22 ~~criminal records check within eighteen (18) months of an application for employment, then an~~
23 ~~employer may request from the bureau of criminal identification of the state police or the local~~
24 ~~police, a letter indicating if any disqualifying information was discovered. The bureau of criminal~~
25 ~~identification of the state police or the local police department shall respond without disclosing~~
26 ~~the nature of any disqualifying information. The letter shall be maintained on file to satisfy the~~
27 ~~requirements of this chapter.~~

28 ~~**40.1-25.1-5. Destruction of fingerprint records.** -- At the conclusion of any background~~
29 ~~check required by this chapter, the state police or the local police department will promptly~~
30 ~~destroy the fingerprint card of the applicant.~~

31 SECTION 10. The act shall take effect on January 1, 2013.

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LC02404
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO STATE AFFAIRS AND GOVERNMENT

1 This act would create a new chapter entitled "Criminal Background Check Act" that
2 would provide for national background checks for all persons applying to be direct patient access
3 employees in a long-term care facility or provider, including, but not limited to, those facilities
4 licensed under chapters 23-17, 23-17.4, 23-17.7.1 and 40.1-24.

5 This act would take effect upon passage.

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LC02404
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