

## **IC 16-27-2**

### **Chapter 2. Criminal History of Home Health Care Operators and Workers**

#### **IC 16-27-2-0.2**

##### **Application of prior law to employees of home health agencies**

Sec. 0.2. The addition of IC 16-10-2.6 (before its repeal, now codified in this chapter) by P.L.190-1989 applies to individuals who are initially employed by a home health agency after June 30, 1989. *As added by P.L.220-2011, SEC.314.*

#### **IC 16-27-2-0.5**

##### **"Expanded criminal history check"**

Sec. 0.5. As used in this chapter, "expanded criminal history check" means a criminal history check of an individual, obtained through a private agency, that includes the following:

- (1) A search of the records maintained by all counties in Indiana in which the individual who is the subject of the background check resided.
- (2) A search of the records maintained by all counties or similar governmental units in another state, if the individual who is the subject of the background check resided in another state.

*As added by P.L.84-2010, SEC.2.*

#### **IC 16-27-2-1**

##### **"Health care professional"**

Sec. 1. As used in this chapter, "health care professional" means any of the following:

- (1) A licensed physician or a physician assistant (as defined in IC 25-22.5-1-1.1).
- (2) A dentist licensed under IC 25-14.
- (3) A chiropractor licensed under IC 25-10-1.
- (4) A podiatrist licensed under IC 25-29.
- (5) An optometrist licensed under IC 25-24.
- (6) A nurse licensed under IC 25-23-1.
- (7) A physical therapist licensed under IC 25-27 or a physical therapy assistant certified under IC 25-27.
- (8) A speech-language pathologist or an audiologist licensed under IC 25-35.6-3.
- (9) A speech-language pathology aide or an audiology aide (as defined in IC 25-35.6-1-2).
- (10) An:
  - (A) occupational therapist licensed; or
  - (B) occupational therapy assistant licensed; under IC 25-23.5.
- (11) A social worker licensed under IC 25-23.6 or a clinical social worker licensed under IC 25-23.6.
- (12) A pharmacist licensed under IC 25-26-13.

*As added by P.L.2-1993, SEC.10. Amended by P.L.178-1993, SEC.2; P.L.147-1997, SEC.2; P.L.90-2007, SEC.1; P.L.197-2007, SEC.7;*

*P.L.197-2011, SEC.65.*

#### **IC 16-27-2-1.5**

##### **"Limited criminal history"**

Sec. 1.5. As used in this chapter, "limited criminal history" means the limited criminal history from the Indiana central repository for criminal history information under IC 10-13-3.

*As added by P.L.177-2009, SEC.3.*

#### **IC 16-27-2-2**

##### **"Home health agency"**

Sec. 2. (a) As used in this chapter, "home health agency" means a home health agency licensed under IC 16-27-1.

(b) The term does not include an individual health care professional who provides professional service to a patient in the temporary or permanent residence of the patient.

*As added by P.L.2-1993, SEC.10. Amended by P.L.178-1993, SEC.3.*

#### **IC 16-27-2-2.1**

##### **"National criminal history background check"**

Sec. 2.1. As used in this chapter, "national criminal history background check" means the determination provided by the state police department under IC 10-13-3-39(i).

*As added by P.L.197-2007, SEC.8. Amended by P.L.84-2010, SEC.3.*

#### **IC 16-27-2-2.2**

##### **"Services"**

Sec. 2.2. As used in this chapter, "services" includes:

- (1) home health services (as defined in IC 16-27-1-5);
- (2) any services such as homemaker, companion, sitter, or handyman services provided by a home health agency in the temporary or permanent residence of a patient or client of the home health agency; and
- (3) personal services (as defined in IC 16-27-4-4).

*As added by P.L.178-1993, SEC.4. Amended by P.L.212-2005, SEC.12; P.L.177-2009, SEC.4.*

#### **IC 16-27-2-3 Version a**

##### **Operation of home health agency or personal services agency; prohibition; criminal conviction**

*Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.*

Sec. 3. (a) A person may not operate a home health agency or a personal services agency if the person has been convicted of any of the following:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2).
- (3) Exploitation of an endangered adult (IC 35-46-1-12).
- (4) Failure to report battery, neglect, or exploitation of an endangered adult (IC 35-46-1-13).

(5) Theft (IC 35-43-4), if the person's conviction for theft occurred less than ten (10) years before the date of submission by the person of an application for licensure as a home health agency under IC 16-27-1 or as a personal services agency under IC 16-27-4.

(b) A person who knowingly or intentionally violates this section commits a Class A misdemeanor.

*As added by P.L.2-1993, SEC.10. Amended by P.L.178-1993, SEC.5; P.L.212-2005, SEC.13.*

#### **IC 16-27-2-3 Version b**

##### **Operation of home health agency or personal services agency; prohibition; criminal conviction**

*Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.*

Sec. 3. (a) A person may not operate a home health agency or a personal services agency if the person has been convicted of any of the following:

(1) Rape (IC 35-42-4-1).

(2) Criminal deviate conduct (IC 35-42-4-2) (repealed).

(3) Exploitation of an endangered adult (IC 35-46-1-12).

(4) Failure to report battery, neglect, or exploitation of an endangered adult (IC 35-46-1-13).

(5) Theft (IC 35-43-4), if the person's conviction for theft occurred less than ten (10) years before the date of submission by the person of an application for licensure as a home health agency under IC 16-27-1 or as a personal services agency under IC 16-27-4.

(b) A person who knowingly or intentionally violates this section commits a Class A misdemeanor.

*As added by P.L.2-1993, SEC.10. Amended by P.L.178-1993, SEC.5; P.L.212-2005, SEC.13; P.L.158-2013, SEC.231; P.L.214-2013, SEC.18.*

#### **IC 16-27-2-4**

##### **Employees; criminal history**

Sec. 4. (a) A person who operates a home health agency under IC 16-27-1 or a personal services agency under IC 16-27-4 shall apply, not more than three (3) business days after the date that an employee begins to provide services in a patient's temporary or permanent residence, for a copy of the employee's limited criminal history, unless the person is required to obtain a national criminal history background check or an expanded criminal history check under subsection (b) or (c).

(b) If a person who operates a home health agency under IC 16-27-1 or a personal services agency under IC 16-27-4 determines an employee lived outside Indiana at any time during the two (2) years immediately before the date the individual was hired by the home health agency or personal services agency, the home health agency or personal services agency shall apply, not more than

three (3) business days after the date that an employee begins to provide services in a patient's temporary or permanent residence, for the employee's national criminal history background check or expanded criminal history check.

(c) If, more than three (3) days after an employee begins providing services in a patient's temporary or permanent residence, a person who operates a home health agency under IC 16-27-1 or a personal services agency under IC 16-27-4 discovers the employee lived outside Indiana during the two (2) years immediately before the date the individual was hired, the agency shall apply, not more than three (3) business days after the date the agency learns the employee lived outside Indiana, for the employee's national criminal history background check or expanded criminal history check.

(d) A home health agency or personal services agency may not employ a person to provide services in a patient's or client's temporary or permanent residence for more than three (3) business days without applying for:

- (1) a national criminal history background check or an expanded criminal history check as required under subsection (b) or (c); or
- (2) a limited criminal history as required by subsection (a).

*As added by P.L.2-1993, SEC.10. Amended by P.L.178-1993, SEC.6; P.L.146-1996, SEC.4; P.L.148-1997, SEC.1; P.L.2-2003, SEC.48; P.L.212-2005, SEC.14; P.L.197-2007, SEC.9; P.L.177-2009, SEC.5; P.L.84-2010, SEC.4.*

#### **IC 16-27-2-5 Version a Employees; prohibition; criminal conviction**

*Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.*

Sec. 5. (a) Except as provided in subsection (b), a person who operates a home health agency under IC 16-27-1 or a personal services agency under IC 16-27-4 may not employ a person to provide services in a patient's or client's temporary or permanent residence if that person's limited criminal history, national criminal history background check, or expanded criminal history check indicates that the person has been convicted of any of the following:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2).
- (3) Exploitation of an endangered adult (IC 35-46-1-12).
- (4) Failure to report battery, neglect, or exploitation of an endangered adult (IC 35-46-1-13).
- (5) Theft (IC 35-43-4), if the conviction for theft occurred less than ten (10) years before the person's employment application date.
- (6) A felony that is substantially equivalent to a felony listed in:
  - (A) subdivisions (1) through (4); or
  - (B) subdivision (5), if the conviction for theft occurred less than ten (10) years before the person's employment application date;

for which the conviction was entered in another state.

(b) A home health agency or personal services agency may not employ a person to provide services in a patient's or client's temporary or permanent residence for more than twenty-one (21) calendar days without receipt of that person's limited criminal history, national criminal history background check, or expanded criminal history check, required by section 4 of this chapter, unless the state police department, the Federal Bureau of Investigation under IC 10-13-3-39, or the private agency providing the expanded criminal history check is responsible for failing to provide the person's limited criminal history, national criminal history background check, or expanded criminal history check to the home health agency or personal services agency within the time required under this subsection.

*As added by P.L.2-1993, SEC.10. Amended by P.L.178-1993, SEC.7; P.L.148-1997, SEC.2; P.L.2-2003, SEC.49; P.L.212-2005, SEC.15; P.L.197-2007, SEC.10; P.L.134-2008, SEC.12; P.L.177-2009, SEC.6; P.L.84-2010, SEC.5.*

#### **IC 16-27-2-5 Version b**

##### **Employees; prohibition; criminal conviction**

*Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.*

Sec. 5. (a) Except as provided in subsection (b), a person who operates a home health agency under IC 16-27-1 or a personal services agency under IC 16-27-4 may not employ a person to provide services in a patient's or client's temporary or permanent residence if that person's limited criminal history, national criminal history background check, or expanded criminal history check indicates that the person has been convicted of any of the following:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2) (repealed).
- (3) Exploitation of an endangered adult (IC 35-46-1-12).
- (4) Failure to report battery, neglect, or exploitation of an endangered adult (IC 35-46-1-13).
- (5) Theft (IC 35-43-4), if the conviction for theft occurred less than ten (10) years before the person's employment application date.
- (6) A felony that is substantially equivalent to a felony listed in:
  - (A) subdivisions (1) through (4); or
  - (B) subdivision (5), if the conviction for theft occurred less than ten (10) years before the person's employment application date;

for which the conviction was entered in another state.

(b) A home health agency or personal services agency may not employ a person to provide services in a patient's or client's temporary or permanent residence for more than twenty-one (21) calendar days without receipt of that person's limited criminal history, national criminal history background check, or expanded criminal history check, required by section 4 of this chapter, unless

the state police department, the Federal Bureau of Investigation under IC 10-13-3-39, or the private agency providing the expanded criminal history check is responsible for failing to provide the person's limited criminal history, national criminal history background check, or expanded criminal history check to the home health agency or personal services agency within the time required under this subsection.

*As added by P.L.2-1993, SEC.10. Amended by P.L.178-1993, SEC.7; P.L.148-1997, SEC.2; P.L.2-2003, SEC.49; P.L.212-2005, SEC.15; P.L.197-2007, SEC.10; P.L.134-2008, SEC.12; P.L.177-2009, SEC.6; P.L.84-2010, SEC.5; P.L.158-2013, SEC.232; P.L.214-2013, SEC.19.*

#### **IC 16-27-2-6**

##### **Fees; responsibility for payment**

Sec. 6. (a) A person who operates a home health agency or a personal services agency under IC 16-27-4 is responsible for the payment of fees under IC 10-13-3-39 and other fees required under section 4 of this chapter.

(b) A home health agency or personal services agency may require a person who applies to the home health agency or personal services agency for employment to provide services in a patient's or client's temporary or permanent residence:

- (1) to pay the cost of fees described in subsection (a) to the home health agency or personal services agency at the time the person submits an application for employment; or
- (2) to reimburse the home health agency or personal services agency for the cost of fees described in subsection (a).

*As added by P.L.2-1993, SEC.10. Amended by P.L.178-1993, SEC.8; P.L.2-2003, SEC.50; P.L.212-2005, SEC.16; P.L.197-2007, SEC.11.*

#### **IC 16-27-2-7**

##### **Prohibited employment practices**

Sec. 7. A person who:

- (1) operates a home health agency or personal services agency; and
- (2) violates section 4 or 5 of this chapter;

commits a Class A infraction.

*As added by P.L.2-1993, SEC.10. Amended by P.L.212-2005, SEC.17.*

#### **IC 16-27-2-8**

##### **Repealed**

*(Repealed by P.L.290-2001, SEC.36.)*

#### **IC 16-27-2-9**

##### **Immunity from liability**

Sec. 9. A person (other than a person denied employment or dismissed under this chapter or against whom a finding is made for the registry of nurse aides under 42 CFR 483.156) who in good faith:

- (1) denies employment to an individual or dismisses an individual from employment under this chapter;
- (2) testifies or participates in an investigation or an administrative or a judicial proceeding arising from:
  - (A) this chapter; or
  - (B) 42 CFR 483 regarding the registry of nurse aides; or
- (3) makes a report to the state department or the registry of nurse aides;

is immune from both civil and criminal liability arising from those actions.

*As added by P.L.110-1999, SEC.4.*