

## **IC 16-28-13**

### **Chapter 13. Criminal History of Nurse Aides and Other Unlicensed Employees**

#### **IC 16-28-13-0.5**

##### **"Health care facility" defined**

Sec. 0.5. As used in this chapter, "health care facility" includes the following:

- (1) An ambulatory outpatient surgical center licensed under IC 16-21-2.
- (2) A health facility licensed under IC 16-28-2 or IC 16-28-3.
- (3) A home health agency licensed under IC 16-27-1.
- (4) A hospice program licensed under IC 16-25-3.
- (5) A hospital licensed under IC 16-21-2.

*As added by P.L.108-1999, SEC.3. Amended by P.L.14-2000, SEC.44.*

#### **IC 16-28-13-1**

##### **"Nurse aide" defined**

Sec. 1. (a) As used in this chapter, "nurse aide" means an individual who provides nursing or nursing related services to residents in the following:

- (1) A health facility.
- (2) A hospital based health facility.
- (3) An ambulatory outpatient surgical center licensed under IC 16-21-2. Under this subdivision, the term applies to an individual who was employed by the center after July 1, 1999.
- (4) A home health agency licensed under IC 16-27-1. Under this subdivision, the term applies to an individual who was employed by the agency after July 1, 1999.
- (5) A hospice program licensed under IC 16-25-3. Under this subdivision, the term applies to an individual who was employed by the program after July 1, 1999.
- (6) A hospital licensed under IC 16-21-2. Under this subdivision, the term applies to an individual who was employed by the hospital after July 1, 1999.

(b) The term does not include the following:

- (1) A licensed health professional (as defined in IC 25-1-9-3).
- (2) A registered dietician.
- (3) An individual who volunteers to provide nursing or nursing related services without pay.

*As added by P.L.152-1995, SEC.18. Amended by P.L.108-1999, SEC.4; P.L.14-2000, SEC.45.*

#### **IC 16-28-13-2**

##### **"Other unlicensed employee" defined**

Sec. 2. (a) As used in this chapter, "other unlicensed employee" means:

- (1) an employee of a health facility;
- (2) a hospital based health facility; or

(3) a personal services attendant (as defined in IC 12-10-17.1-8);  
who is not licensed (as defined in IC 25-1-9-3) by a board (as defined in IC 25-1-9-1).

(b) The term does not include an employee of an ambulatory outpatient surgical center, a home health agency, a hospice program, or a hospital that is not licensed (as defined in IC 25-1-9-3) by a board (as defined in IC 25-1-9-1).

*As added by P.L.152-1995, SEC.18. Amended by P.L.108-1999, SEC.5; P.L.255-2001, SEC.16; P.L.141-2006, SEC.85.*

### **IC 16-28-13-3**

#### **Crimes barring employment at certain health care facilities**

Sec. 3. (a) A health care facility or an entity in the business of contracting to provide nurse aides or other unlicensed employees for a health care facility may not knowingly employ a person as a nurse aide or other unlicensed employee if one (1) or more of the following conditions exist:

(1) The person has been convicted of any of the following:

(A) A sex crime (IC 35-42-4).

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

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

(D) Theft (IC 35-43-4), if the person's conviction for theft occurred less than five (5) years before the individual's employment application date, except as provided in IC 16-27-2-5(a)(5).

(E) Murder (IC 35-42-1-1).

(F) Voluntary manslaughter (IC 35-42-1-3).

(G) Involuntary manslaughter (IC 35-42-1-4) within the previous five (5) years.

(H) Felony battery within the previous five (5) years.

(I) A felony offense relating to controlled substances within the previous five (5) years.

(2) The person:

(A) has abused, neglected, or mistreated a patient or misappropriated a patient's property; and

(B) had a finding entered into the state nurse aide registry.

(b) A person who knowingly or intentionally applies for a job as a nurse aide or other unlicensed employee at:

(1) a health care facility; or

(2) an entity in the business of contracting to provide nurse aides or other unlicensed employees for a health care facility; after a conviction of one (1) or more of the offenses listed in subsection (a)(1) commits a Class A infraction.

*As added by P.L.152-1995, SEC.18. Amended by P.L.147-1996, SEC.1; P.L.108-1999, SEC.6.*

### **IC 16-28-13-4**

#### **Operator of health care facility; request for nurse aide registry**

### **report and limited criminal history**

Sec. 4. (a) Except as provided in subsection (b), a person who:

- (1) operates or administers a health care facility; or
- (2) operates an entity in the business of contracting to provide nurse aides or other unlicensed employees for a health care facility;

shall apply within three (3) business days from the date a person is employed as a nurse aide or other unlicensed employee for a copy of the person's state nurse aide registry report from the state department and a limited criminal history from the Indiana central repository for criminal history information under IC 10-13-3 or another source allowed by law.

(b) A health care facility is not required to apply for the state nurse aide registry report and limited criminal history required by subsection (a) if the health care facility contracts to use the services of a nurse aide or other unlicensed employee who is employed by an entity in the business of contracting to provide nurse aides or other unlicensed employees to health care facilities.

*As added by P.L.152-1995, SEC.18. Amended by P.L.147-1996, SEC.2; P.L.108-1999, SEC.7; P.L.2-2003, SEC.51.*

### **IC 16-28-13-5**

#### **Operator of health care facility; prohibition from employing person with certain convictions**

Sec. 5. A person who:

- (1) operates or administers a health care facility; or
- (2) operates an entity in the business of contracting to provide nurse aides or other unlicensed employees for a health care facility;

may not employ a person as a nurse aide or other unlicensed employee after receipt of the person's state nurse aide registry report if that person's report indicates that the person committed an offense under section (3)(a)(2) of this chapter and has been placed on the state nurse aide registry, or after receipt of the limited criminal history if that person's limited criminal history indicates that the person has been convicted of any of the offenses described in section 3(a)(1) of this chapter.

*As added by P.L.152-1995, SEC.18. Amended by P.L.147-1996, SEC.3; P.L.108-1999, SEC.8.*

### **IC 16-28-13-6**

#### **Operator of health care facility; fees for request of registry report and criminal history**

Sec. 6. (a) A person who:

- (1) operates or administers a health care facility; or
- (2) operates an entity in the business of contracting to provide nurse aides or other unlicensed employees for a health care facility;

is responsible for the payment of fees under IC 10-13-3-30 and other fees required to process a state nurse aide registry report and a limited

criminal history under section 4 of this chapter.

(b) A health care facility or an entity in the business of contracting to provide nurse aides or other unlicensed employees for a health care facility may require a person who applies to the health care facility or entity for employment as a nurse aide or other unlicensed employee:

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

*As added by P.L.152-1995, SEC.18. Amended by P.L.147-1996, SEC.4; P.L.108-1999, SEC.9; P.L.2-2003, SEC.52.*

### **IC 16-28-13-7**

#### **Applicability of chapter**

Sec. 7. The application of this chapter to a health care facility or an entity in the business of contracting to provide nurse aides or other unlicensed employees for a health care facility is limited to an individual:

- (1) who is employed by:
  - (A) a health care facility; or
  - (B) an entity in the business of contracting to provide nurse aides or other unlicensed employees for a health care facility;and
- (2) whose employment or responsibilities are limited to activities primarily performed within a health care facility.

*As added by P.L.152-1995, SEC.18. Amended by P.L.147-1996, SEC.5; P.L.108-1999, SEC.10; P.L.1-2002, SEC.73; P.L.1-2007, SEC.134.*

### **IC 16-28-13-8**

#### **Rights of individuals denied or dismissed from employment**

Sec. 8. An individual who is denied employment or dismissed from employment under this chapter:

- (1) does not have a cause of action;
- (2) is not eligible for unemployment compensation;
- (3) does not acquire the rights of an unemployed individual; and
- (4) does not have other rights under IC 22;

as a result of the denial or dismissal.

*As added by P.L.152-1995, SEC.18.*

### **IC 16-28-13-9**

#### **Immunity from civil and criminal 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 nurse aide registry 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 nurse aide registry; or
- (3) makes a report to the state department or the nurse aide registry;

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

*As added by P.L.152-1995, SEC.18.*

#### **IC 16-28-13-10**

##### **Operator of health care facility; intentional violation of chapter**

Sec. 10. A person:

(1) who:

- (A) operates or administers a health care facility; or
- (B) operates an entity in the business of contracting to provide nurse aides or other unlicensed employees for a health care facility; and

(2) who knowingly or intentionally violates section 4 or 5 of this chapter;

commits a Class A infraction.

*As added by P.L.152-1995, SEC.18. Amended by P.L.147-1996, SEC.6; P.L.108-1999, SEC.11.*

#### **IC 16-28-13-11**

##### **Personnel record; providing limited criminal history**

Sec. 11. (a) Each:

- (1) health care facility; and
- (2) entity in the business of contracting to provide nurse aides or other unlicensed employees for a health care facility;

shall maintain a personnel record for each nurse aide and other unlicensed employee employed by the health care facility or entity that includes the nurse aide's or other unlicensed employee's state nurse aide registry report and limited criminal history required by section 4 of this chapter.

(b) The personnel records of each health care facility shall be available for inspection by the state department to assure compliance with this chapter.

(c) An entity in the business of contracting to provide nurse aides or other unlicensed employees to health care facilities shall provide a copy of the state nurse aide registry report and limited criminal history obtained under section 4 of this chapter to each health care facility to which the entity provides a nurse aide or other unlicensed employee. If the entity fails to provide a copy of the state nurse aide registry report and limited criminal history to a health care facility, the health care facility is not in violation of this chapter.

*As added by P.L.152-1995, SEC.18. Amended by P.L.147-1996, SEC.7; P.L.108-1999, SEC.12.*

#### **IC 16-28-13-12**

##### **Health care facility to report convictions of employees**

Sec. 12. If a health care facility has knowledge of a conviction of an employee of the health care facility that would indicate unfitness for service as a nurse aide, other unlicensed employee, or other health care professional (as defined by IC 16-27-2-1), the health care facility shall report the information to the state nurse aide registry or the appropriate licensing authority.

*As added by P.L.108-1999, SEC.13.*

### **IC 16-28-13-13**

#### **Rules**

Sec. 13. The state department may adopt rules under IC 4-22-2 to implement this chapter.

*As added by P.L.108-1999, SEC.14.*