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ARE YOU CONDUCTING PROPER BACKGROUND CHECKS OF YOUR HEALTHCARE EMPLOYEES? FAILING TO DO SO MAY COST YOU IN A LAWSUIT.

As an attorney who frequently represents long-term care facilities (nursing homes, assisted living facilities, CILA, etc.), I am constantly dealing with issues concerning the background of employees when an injury occurs. Most of the time, plaintiff's counsel will attack the employees training, but occasionally the employee's criminal history is at issue. In these cases, it can be of paramount importance that the client have a solid understanding of the legal requirements relating to the background checks of its healthcare employees under Illinois law.

Illinois requires healthcare employers to conduct background checks of its employees who may have contact with residents or have access to the living quarters or financial, medical or personal records of residents. (225 ILCS 46/10)(77 Ill. Adm. Code 995.100). This requirement applies to all individuals employed or retained by a health care employer as home health care aides, nurse aides, personal care assistants, private duty nurse aides, day training personnel, or an individual working in any similar health-related occupation. (225 ILCS 46/10).

The area where most of the clients have issues, relates to the specific requirement to use a livecan vendor. Pursuant to 225 ILCS 46, the background check must include a "livescan" from a "livescan vendor." A "livescan vendor" is define as follows:

> *Livescan vendor' means an entity whose equipment has been certified by the Department of State Police to collect an individual's demographics and inkless fingerprints and, in a manner prescribed by the Department of State Police and the Department of Public Health, electronically transmit the fingerprints and required data to the Department of State Police and a daily file of required data to the Department of Public Health. .*

The livescan vendor collects the prospective employee's fingerprints and this allows the Illinois Department of Human Services ("IDHS") and the livescan vendor to communicate with each other to determine whether the prospective employee has any disqualifying criminal convictions (not all criminal convictions disqualify an applicant). The IDHS provides a list of approved livescan vendors on its website.

This requirement is not limited to healthcare providers. Staffing agencies who place temporary staff in any of the above listed healthcare positions, must also comply with this requirement. Please contact me if you would like the link to the livescan vendor list or have any questions about this article.