**Section 955.270 Department Review of Waiver Application**

a) The Department will consider an application for a waiver from individuals who have been convicted of committing or attempting to commit one or more of the offenses listed in Appendix C upon receipt of a complete application and the results of a fingerprint-based criminal history records check in accordance with Sections 955.115 and 955.165.

b) An application for a waiver shall be denied unless the individual meets the following requirements and submits documentation thereof with the waiver application:

1) Except in the instance of payment of court-imposed fines or restitutions in which the individual is adhering to a payment schedule, the individual shall have met all obligations to the court and under terms of parole (i.e., probation or mandatory supervised release has been successfully completed); and

2) The individual shall have satisfactorily completed a drug and/or alcohol recovery program, if drugs and/or alcohol were involved in the offense and the individual was ordered to participate in a rehabilitation program as part of the judgment.

c) The Department may grant a waiver based on the following information provided by the individual and the results of the fingerprint-based criminal history records check:

1) *The age of the* individual *at the time of the offense;*

2) *A written explanation of each conviction to include what happened, how many years have passed since the offense, the individuals involved, and any other circumstances surrounding the offense* (Section 40(a) of the Act);

3) The individual's work history;

4) The individual's criminal history since the disqualifying conviction, to include the results of the Illinois criminal history records report, convictions in other states, and federal convictions;

5) The individual's record on another state's registry for certified nursing assistants, if the individual was certified as a nursing assistant in another state;

6) The individual's completion of rehabilitation if ordered as part of the judgment to participate in a rehabilitation program;

7) *Official documentation showing that all fines have been paid, if applicable*; if on a court-imposed payment schedule for fines or restitution, whether the individual is adhering to a payment schedule; *the date probation* or mandatory supervised release *or parole was satisfactorily completed, if applicable*; and whether all terms of parole (i.e., conditional discharge, probation or mandatory supervised release) have been successfully completed (Section 40(a) of the Act);

8) *Employment and character references,* if the individual submits references*; and*

9) Any other *evidence demonstrating the ability of the* individual *to perform the employment responsibilities competently and evidence that the* individual *does not pose a threat to the health or safety of residents*, *patients, or clients*, if submitted by the individual, which may include, but is not limited to, the individual's participation in anger management or domestic violence prevention programs. (Section 40(b) of the Act)

d) Waivers will not be granted to individuals who have not met the following time frames.

1) Single disqualifying misdemeanor conviction – no earlier than one year after the conviction date;

2) Two to three disqualifying misdemeanor convictions – no earlier than three years after the most recent conviction date;

3) More than three disqualifying misdemeanor convictions – no earlier than five years after the most recent conviction date;

4) Single disqualifying felony convictions – no earlier than three years after the conviction date;

5) Two to three disqualifying felony convictions – no earlier than five years after the most recent conviction date;

6) More than three disqualifying felony convictions – no earlier than 10 years after the most recent conviction date.

e) Waivers will not be granted to individuals who have been convicted of committing or attempting to commit one or more of the offenses listed in Appendix A.

f) The Department will *inform health care employers if a waiver is being sought by entering a record* notation *on the Health Care Worker Registry that a waiver is pending and must act upon the waiver request within 30 days* after *receipt of all necessary information* pursuant to Section 955.260*.* If a waiver is granted, denied, or revoked, that information will be entered on the Health Care Worker Registry. *The Department will send an* individual *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* individual's *request.* (Section 40(c) of the Act)

g) Appeal Process for Convictions Listed in Appendix A:

1) An appeal process is available for individuals who have been denied a waiver because of a conviction for committing or attempting to commit one or more offenses listed in Appendix A. All of the following must be provided for an appeal to be considered:

A) A letter appealing the denial of the waiver, in which the individual states his or her reasons for requesting the appeal;

B) The original waiver application that was completed pursuant to Section 955.260 and any additional information provided when the waiver was denied;

C) A copy of the police report generated at the time of arrest for all disqualifying convictions listed in Section 955.160; and

D) A transcript of the trial or court proceedings for all disqualifying convictions listed in Section 955.160.

2) An appeal will be denied unless the individual meets the following requirements and submits documentation with the appeal:

A) Except in the instance of payment of court-imposed fines or restitutions in which the individual is adhering to a payment schedule, the individual shall have met all obligations to the court and under terms of parole (i.e., probation or mandatory supervised release has been successfully completed) 10 or more years prior to the submission of the appeal;

B) The individual shall have satisfactorily completed a drug and/or alcohol recovery program 10 or more years prior to the submission of the appeal, if drugs and/or alcohol were involved in the disqualifying offense and the individual was ordered to participate in a rehabilitation program as part of the judgment. The individual shall not have been ordered to participate in another drug and/or alcohol program during the 10 years prior to the submission of the appeal for any offense.

3) The Director or designee will consider the information submitted with the appeal application and the results of a fingerprint-based criminal history records check to determine whether to grant a waiver as a result of an appeal. If the Director or designee determines that the individual does not pose a threat to the health or safety of residents, patients, or clients, the Director will issue a waiver.

h) Waiver Revocation

1) The Department will automatically revoke a waiver if the waiver recipient is convicted of any additional disqualifying offense.

2) The Department will automatically revoke a waiver granted for a conviction of an offense listed in Appendix A if the waiver recipient is convicted of any additional crimes, other than a minor traffic violation, regardless of whether the offense is disqualifying.

i) *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 or not granted under this Section.* (Section 40(e) of the Act)

(Source: Amended at 44 Ill. Reg. 18422, effective October 29, 2020)