The Impact of Passage of H 5628 Sub A – Relating to Human Services

This bill, designed to implement a federal grant providing for expanded fingerprint and criminal record check requirements for people in the health care field, would affect literally thousands of job applicants and volunteers. It is therefore critical that, in seeking to implement the federal grant the state has obtained, the bill not go further than necessary to accomplish that goal. In a number of important ways, however, the proposed Sub A is much broader than necessary and will unfairly place burdens in the way of many job applicants.

Under current law, employees of home nursing care, home care, or nursing care facilities or providers are required to undergo a statewide background check ***if*** their job entails direct, unsupervised contact with a patient. Under this legislation, virtually all employees and volunteers of up to 415 facilities across Rhode Island will be required to undergo state and federal background checks, regardless of whether or not their employment will ever result in their time alone with a patient.

Below are some of the major concerns about the bill's unnecessarily broad reach:

- AUTOMATIC AND PERMANENT BAN OF EMPLOYMENT. Current state law permits employers of occupations requiring criminal record checks to evaluate an individual's criminal history and make a final determination as to its impact on their hiring decision, even if they have a record of a "disqualifying offense." In a similar vein, Section 6201 of the Patient Protection and Affordable Care Act, the federal law to which this legislation is meant to correspond, requires that, for persons who have a disqualifying offense, States provide an independent appeal process "which shall include consideration of the passage of time, extenuating circumstances, demonstration of rehabilitation, and relevancy of the particular disqualifying information with respect to the current employment of the individual." This legislation does not provide any such independent analysis to take place. A person who has ever been convicted of a disqualifying offense is automatically and permanently barred from employment.

- DISQUALIFYING OFFENSES. The impact of the bill's automatic ban is exacerbated by the number and types of offenses that lead to permanent disqualification from employment. The federal law requires that only a small number of offenses be considered disqualifying. This bill greatly expands that requirement. Though it generally mirrors most of the offenses considered "disqualifying" in state law now, the bill's automatic ban would have a major impact on non-violent ex-offenders. Under the bill, any person ever convicted of a felony drug offense would be barred from working in these fields. Indeed, even family members could find themselves barred from participating in Medicaid's Personal Choice program to assist a loved one.

- LIMITED APPEAL PROCESS. The only appeal process the bill provides a person with a "disqualifying" criminal record is to challenge the accuracy of the information. Employees must be able to prove, before an appeal will be considered, that their result was inaccurate, and they must provide this proof within 14 days. Considering that the federal government has often acknowledged that there are significant and widespread

inaccuracies in the NCIC database, this burden of proof is wrongly directed. In addition, there is no requirement codified in this bill that employees be made aware of their right to appeal or that they must provide proof of their innocence.

- PRIVACY AND SECURITY. Section 6201 requires the state to implement "appropriate privacy and security safeguards." The bill doesn't even mention, much less address, any such safeguards.

- ARREST INFORMATION. Section 6201 requires the creation of a "rap-back system" wherein employers are notified of an employee's subsequent *convictions* of a relevant *"disqualifying"* offense. Going well beyond that mandate, this bill would require each covered facility to be notified of any ***arrest*** of their employees, *regardless* of the type of offense, and regardless of the outcome.

- COSTS. Unlike most of the occupational fingerprinting statutes already enacted, H 5628A requires applicants to pay for their own background checks, which will cost them $40 or more. R.I.G.L. 28-6.3-1 holds that "no employer or agent of any employer shall charge a fee for the filing of an employment application." This bill essentially creates an exemption in that law, applying it to predominately female-dominated and low paying jobs in the nursing and related health care fields. If the state and employers feel that these checks are critical, they should be required to pay for them, not the job applicant.