

ENGROSSED HOUSE
BILL NO. 2395

By: Seikel of the House

and

Robinson of the Senate

An Act relating to poor persons; creating a community services worker registry; defining terms; prohibiting employment of community services workers without a registry review or a criminal background check; providing exceptions; providing for performance; providing for temporary employment; requiring reports; providing notification; prohibiting release of certain information; requiring termination of certain employees; providing certain performance; providing penalties; providing for establishment of registry; providing for contents; providing for disclosure; providing for procedures; making certain actions unlawful; specifying certain penalties; specifying certain time limitations; requiring the Commission for Human Services to establish a pay incentive plan for certain employees of the Department in the occupational and physical therapy classification and the occupational and physical therapy assistant classification; providing certain restrictions; requiring promulgation of rules; providing for evaluation committee; providing for membership; providing for implementation; requiring the Office of Personnel Management to develop and maintain a classification and compensation range system for

certain classification and positions; authorizing setting compensation rates; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1025.1 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. For purposes of this chapter:

1. "Bureau" means the Oklahoma State Bureau of Investigation;

2. "Commission" means the Commission for Human Services;

3. "Community services provider" or "provider" means an individual, a facility, home, agency or program or organization which provides community services to persons with developmental disabilities;

4. "Community services worker" or "worker" means any person employed by or under contract with a community services provider to provide, for compensation, health-related services or supportive assistance to persons with developmental disabilities and who is not a licensed or certified health professional;

5. "Department" means the Department of Human Services;

6. "Developmental disability" means a severe, chronic disability of a person which:

- a. is attributable to a mental or physical impairment or combination of mental and physical impairments, such as mental retardation, cerebral palsy, or autism,
- b. is manifested before the person attains twenty-two (22) years of age,
- c. is likely to continue indefinitely,

- d. results in substantial functional limitations in three or more of the following areas of major life activity:
 - (1) self-care,
 - (2) receptive and expressive language,
 - (3) learning,
 - (4) mobility,
 - (5) self-direction,
 - (6) capacity for independent living, and
 - (7) economic self-sufficiency, and
- e. reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated;

7. "Health-related services" means those services provided by community services providers or community services workers to persons with developmental disabilities that include, but are not limited to, the following: personal hygiene, transferring, range of motion, supervision or assistance in activities of daily living, basic nursing care such as taking temperature, pulse or respiration, positioning, incontinent care, identification of signs and symptoms of disease and behavior management; and

8. "Supportive assistance" means the service rendered to persons with developmental disabilities which is sufficient to enable such person to meet an adequate level of daily living. Supportive assistance includes, but is not limited to, training, supervision, assistance in housekeeping, assistance in the preparation of meals, assistance in the safe storage, distribution and administration of medications, and assistance in personal care as necessary for the health and comfort of persons with developmental disabilities.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1025.2 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. 1. Except as otherwise provided by subsection C of this section, before any community services provider makes an offer to employ or to contract with a community services worker to provide health-related services or supportive assistance to a person with a developmental disability, the community services provider shall:

- a. check with the Department of Human Services to determine if the name of the person seeking employment or contract has been entered on the community services workers registry created pursuant to Section 3 of this act and whether such person is listed in good standing on the registry. If the name of the person seeking employment or contract with the community services provider is not listed in good standing on the registry, the provider shall not hire or contract with the person, or
- b. provide for a criminal arrest check to be made on the community services worker pursuant to the provisions of this section. If the community services provider is a facility, home or institution which is part of a larger complex of buildings, the requirement of a criminal arrest check shall apply only to an offer of employment or contract made to a person who will work primarily in the immediate boundaries of the facility, home or institution.

2. Except as otherwise specified by subsection C of this section, a community services provider is authorized to obtain any criminal arrest records maintained by the Oklahoma State Bureau of Investigation which the employer is required or authorized to request by the provisions of this section.

3. The community services provider shall request the Bureau to conduct a criminal arrest check on the community services worker desiring employment or contract with the provider and shall provide to the Bureau any relevant information required by the Bureau to conduct the check. The community services provider shall pay a fee of Fifteen Dollars (\$15.00) to the Bureau for each criminal arrest check that is conducted pursuant to such a request.

4. The requirement of a criminal arrest check shall not apply to an offer of employment made to:

- a. any person who is the holder of a current license or certificate issued pursuant to the laws of this state authorizing such person to practice the healing arts,
- b. a registered nurse or practical nurse licensed pursuant to the Oklahoma Nursing Practice Act,
- c. a physical therapist registered pursuant to the Physical Therapy Practice Act,
- d. a physical therapist assistant licensed pursuant to the Physical Therapy Practice Act,
- e. a social worker licensed pursuant to the provisions of the Social Worker's Licensing Act,
- f. a speech pathologist or audiologist licensed pursuant to the Speech Pathology and Audiology Licensing Act,
- g. a dietitian licensed pursuant to the provisions of the Licensed Dietitian Act,
- h. an occupational therapist licensed pursuant to the Occupational Therapy Practice Act,
- i. an individual who is to be employed by a nursing service conducted by and for the adherents of any religious denomination, the tenets of which include reliance on spiritual means through prayer alone for healing,

- j. a nurses aide who is currently certified and in good standing with the State Department of Health and whose name is listed on the nurses aide registry maintained by the State Department of Health, or
- k. a certified community services worker whose name is currently listed on the community services worker registry, created by Section 3 of this act, maintained by the Department of Human Services.

B. At the request of the community services provider, the Bureau shall conduct a criminal arrest check on any person desiring employment or contract pursuant to subsection A of this section or any person employed by the community services provider, including the persons specified in paragraph 4 of subsection A of this section, at any time during the period of employment of such person with the provider.

C. A community services provider may make an offer of temporary employment to a community services worker pending the results of the registry review to determine if such person is in good standing on the registry and, as applicable, a criminal arrest check on the person. The community services provider in such instance shall provide to the Bureau the name and relevant information relating to the person within seventy-two (72) hours after the date the person accepts temporary employment. The community services provider shall not hire or contract with a person as a community services worker on a permanent basis until the results of the registry review and criminal arrest check are received.

D. 1. The Bureau shall not provide to the community services provider the criminal arrest records of a person being investigated pursuant to this section unless the criminal records relate to:

- a. any felony or misdemeanor classified as a crime against the person,

- b. any felony or misdemeanor classified as a crime against public decency or morality,
- c. any felony or misdemeanor classified as domestic abuse pursuant to the provisions of the Protection from Domestic Abuse Act,
- d. a felony violation of any state statute intended to control the possession or distribution of a Schedule I through V drug pursuant to the Uniform Controlled Dangerous Substances Act, or
- e. any felony or misdemeanor classified as a crime against property.

2. Within five (5) days of receiving a request to conduct a criminal arrest check, the Bureau shall complete the criminal arrest check and report the results of the check to the requesting community services provider. The Bureau shall also send a report of the results of the check to the Department of Human Services to be entered upon the community services worker registry.

E. Every community services provider shall inform each applicant for employment, or each prospective contract provider, as applicable, that the community services provider is required to obtain a registry review or a criminal arrest record, as applicable, before making an offer of permanent employment or contract to the community services worker described in subsection A of this section.

F. 1. If the results of a criminal arrest check reveal that the subject person has been convicted of any of the following offenses, the community services provider shall not employ or contract with the person:

- a. assault, battery, or assault and battery with a dangerous weapon,
- b. aggravated assault and battery,
- c. murder or attempted murder,
- d. manslaughter, except involuntary manslaughter,

- e. rape, incest or sodomy,
- f. indecent exposure and indecent exhibition,
- g. pandering,
- h. child abuse,
- i. abuse, neglect or financial exploitation of any person entrusted to his care or possession,
- j. burglary in the first or second degree,
- k. robbery in the first or second degree,
- l. robbery or attempted robbery with a dangerous weapon, or imitation firearm,
- m. arson in the first or second degree,
- n. unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act,
- o. grand larceny, or
- p. petit larceny or shoplifting within the past seven (7) years.

2. If the results of a registry review or criminal arrest check reveal that a community services worker hired on a temporary basis pursuant to subsection C of this section or any other person who is an employee of the provider or under contract with the provider has been convicted of any of the offenses listed in paragraph 1 of this subsection, the community services provider shall immediately terminate the community services worker's employment or contract. The provisions of this paragraph shall not apply to a community services worker who has been continuously employed by the community services provider prior to January 1, 1997.

G. A community services provider shall not employ or continue employing a person addicted to any Schedule I through V drug as specified by the Uniform Controlled Dangerous Substances Act unless

the person produces evidence that the person has successfully completed a drug rehabilitation program.

H. All criminal records received by the community services provider are for the exclusive use of the Department of Human Services and the community services provider which requested the information. Except as otherwise provided by this act or upon court order or with the written consent of the person being investigated, the records shall not be released or otherwise disclosed to any other person or agency.

I. Any person releasing or disclosing any information in violation of this section, upon conviction thereof, shall be guilty of a misdemeanor.

J. As part of any inspections required by law, the Department of Human Services shall review the employment files of the community services provider required to obtain criminal records to ensure such community services provider is in compliance with the provisions of this section.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1025.3 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. The Department of Human Services shall establish and maintain a community services worker registry that:

1. Is sufficiently accessible to promptly meet the needs of the public and employers; and

2. Provides a process for public and community services provider notification of alleged abuse, exploitation or neglect of persons with developmental disabilities or criminal record of the worker.

B. The certified community services worker registry shall:

1. Contain information as to whether an individual has received a criminal background check pursuant to Section 2 of this act, the date thereof and the results of the criminal background check; and

2. Include but not be limited to the following information on each community services worker:

- a. the individual's full name,
- b. information necessary to identify each individual,
- c. the date the individual's name was placed in the registry, and
- d. information on any finding of substantive abuse or neglect concerning the worker, including:
 - (1) documentation of the Department's investigation, including the nature of the allegation and the evidence that led the Department to confirm the allegation, and
 - (2) a statement by the individual disputing the finding or confirming the finding if the individual chooses to make one.

C. The Department shall include the information specified in subparagraph d of paragraph 2 of subsection B of this section in the registry within ten (10) working days of the substantiating finding or receipt of the criminal background check and it shall remain in the registry, unless:

1. It has been determined by a district court or an appeal court that the finding was in error; or
2. The Department is notified of the community services worker's death.

D. Upon request, the Department shall disclose any of the information relating to the criminal background check and to any abuse, exploitation and neglect to the following persons requesting such information, and may disclose additional information the Department determines necessary:

1. The community services worker which is the subject of the information;
2. Any law enforcement officer or official;

3. The Governor;

4. Any community services provider;

5. The Department of Mental Health and Substance Abuse Services, the State Department of Public Health, and any other state or federal agency requesting and needing such information pursuant to their official duties pursuant to law;

6. A nursing facility or specialized facility, as such terms are defined by the Nursing Home Care Act;

7. A residential care home as such term is defined by the Residential Care Act;

8. An adult day care center, as such term is defined by the Adult Day Care Act;

9. A home care agency, as such term is defined by the Home Care Act;

10. The Department of Human Services, in its capacity as an operator of any hospital or health care institution, or as a contractor with providers of the Nontechnical Medical Care Program; and

11. A group home, as such term is defined by the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act;

12. Adult companion home as such term is defined by the Oklahoma Adult Certification Act.

E. Upon receipt of an allegation of abuse, exploitation or neglect of a client by a community services worker, the Department shall place a pending notation in the registry until a final determination has been made. If the investigation, or administrative hearing held to determine whether the community services worker is in violation of the law or rules promulgated pursuant thereto, reveals that the abuse, exploitation or neglect was:

1. Unsubstantiated, the pending notation shall be removed within twenty-four (24) hours of receipt of notice by the Department; or

2. Substantiated, the community services worker's name shall be maintained on the registry but a notation shall be entered which states the community services worker is not in good standing.

F. Upon a written request, the Department shall provide within twenty (20) working days a community services worker with all information on the community services worker's record when a finding of abuse, exploitation or neglect is confirmed and a notation is placed in the registry that the community services worker is not in good standing.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1025.4 of Title 56, unless there is created a duplication in numbering, reads as follows:

Any person violating the provisions of this act, upon conviction thereof, shall be guilty of a misdemeanor and shall be punished by a fine of not less than Three Hundred Dollars (\$300.00) but not to exceed One Thousand Dollars (\$1,000.00). In addition to the fine, such person may be imprisoned in the county jail for not more than thirty (30) days. Each day that such violation continues shall be considered to be a separate violation.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 162.5 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. On or before January 1, 1997, the Commission for Human Services shall, pursuant to the provisions of this section, develop a pay incentive plan for employees of the Department of Human Services within the occupational and physical therapy classification and the occupational and physical therapy assistant classification.

B. The plan developed by the Commission shall not permit payment in any one (1) year of incentives to any one employee of the

Department within the occupational and physical therapy classification and the occupational and physical therapy assistant classification amounting to more than twenty percent (20%) of the employee's regular salary, exclusive of fringe benefits or extra duty pay. Any incentive pay award shall be considered as bonus pay in an annual award and shall not be a part of the employee's base salary. Any incentive pay awards received shall be excluded from the employee's compensation for purposes of calculating retirement, pursuant to the Oklahoma Public Employees Retirement System, and shall not be subject to taxes levied by the Federal Insurance Contributions Act (F.I.C.A.), to the extent such exemption is provided by federal law.

C. The Commission for Human Services shall:

1. Promulgate rules necessary for the effective implementation and administration of this section;

2. Provide for an evaluation committee which shall advise the Director of Human Services on which employees in the Department in the occupational and physical therapy classification and the occupational and physical therapy assistant classification are to receive incentive pay awards and the amount of each incentive pay award according to the plan. The committee shall be composed of:

- a. the Director of the Department of Human Services or designee,
- b. the administrative heads of any division of the Department with employees having occupational and physical therapy classifications or occupational and physical therapy assistant classifications,
- c. the administrative head of the Finance Division of the Department,
- d. the Secretary: Department of Health and Human Services or designee, and

e. the administrative head of the personnel division of the Department.

The incentive pay plan shall not be implemented until the rules promulgated by the Commission are reviewed by the Oklahoma Legislature pursuant to Article I of the Administrative Procedures Act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 840-1.11 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Office of Personnel Management shall develop and maintain a classification and compensation range system for occupational and physical therapy positions and occupational and physical therapy assistant positions for the Department of Human Services based on annual market paylines.

B. The Department of Human Services may set employee compensation rates for occupational and physical therapy practitioners and occupational and physical therapy assistants within the classification and compensation range system established by the Office of Personnel Management pursuant to this section.

SECTION 7. This act shall become effective November 1, 1996.

Passed the House of Representatives the 27th day of February, 1996.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1996.

President of the Senate