

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 1790

By: Seikel

AS INTRODUCED

An Act relating to persons with disabilities;

amending 10 O.S. 1991, Sections 1412, as amended by Section 4, Chapter 307, O.S.L. 1992, 1414, 1414.1, as amended by Section 5, Chapter 307, O.S.L. 1992 and 1415.1, as amended by Section 1, Chapter 137, O.S.L. 1996 (10 O.S. Supp. 1996, Sections 1412, 1414.1 and 1415.1), which relate to persons with developmental disabilities; modifying functions and duties of the Mental Retardation Advisory Committee; repealing outdated behavior management standard for certain accreditation for certain institutions; modifying admission criteria for certain persons at certain institutions; authorizing the Department of Human Services to reimburse certified volunteers and family members of legal costs of initiating guardianship proceedings for certain clients; amending 22 O.S. 1991, Sections 1175.6 and 1175.7, which relate to court orders for incompetent persons; authorizing consideration of voluntary treatment for previously referred incompetent offenders with mental retardation; amending Section 2, Chapter 291, O.S.L. 1992 (56 O.S. Supp. 1996, Section 227), which relates to the Developmental Disabilities

Services Division within the Department of Human Services; providing for preferences; modifying criteria for qualified corporations; requiring confidentiality for certain complaint review for determining qualified corporations; providing exceptions; 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; creating a community services worker registry; 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. AMENDATORY 10 O.S. 1991, Section 1412, as amended by Section 4, Chapter 307, O.S.L. 1992 (10 O.S. Supp. 1996, Section 1412), is amended to read as follows:

Section 1412. A. The Director, who should not be removed from office, except for cause, subject to the approval of the Commission, shall appoint an advisory committee to advise the Commission and Director on matters relating to the ~~care and treatment of the mentally retarded~~ service delivery for persons with developmental disabilities.

~~Such~~ B. The advisory committee shall include among its members representatives of state agencies and persons representative of professional, civic, or other public or nonprofit private agencies, organizations, or groups concerned with ~~problems of the mentally retarded~~ services needed by persons who have a developmental disability, including the ~~Oklahoma Association for Mentally Retarded Children and the~~ parent-guardian association of the Northern Oklahoma Resource Center of Enid, the Southern Oklahoma Resource Center of Pauls Valley, and ~~the Hisson Memorial Center~~ families of individuals receiving services from the Developmental Disabilities Services Division of the Department of Human Services.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 1414, is amended to read as follows:

Section 1414. A. 1. Mentally retarded persons who are legal residents of this state and have a mental age not above that of the average nine-year-old child, as determined by psychological examination, may be admitted to an institution named in Section 1406

of this title or provided community services, if available, on a voluntary basis only upon written application to the Director on forms provided for such purpose. Other mentally retarded persons who are residents of this state and who are above said mental age may be admitted or provided services on a voluntary basis upon recommendation of the superintendent of the institution and approval of the Director.

2. The application shall be signed by any parent having legal custody of said person, a guardian appointed by a court, or other legal custodian of said person.

3. The psychological examination provided for in this section shall be on forms provided by the Department and must be completed before application can be approved and the applicant admitted to the institution.

B. Release of a resident of any of the institutions named in Section 1406 of this title shall be subject to such reasonable rules and conditions as may be prescribed by the ~~Public Welfare~~ Commission for Human Services and shall be made only to the parent, guardian appointed by a court, or legal custodian of the resident, except that a resident eighteen (18) years of age or older who has not been found by a court to be incompetent or incapacitated may request and obtain his own release.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 1414.1, as amended by Section 5, Chapter 307, O.S.L. 1992 (10 O.S. Supp. 1996, Section 1414.1), is amended to read as follows:

Section 1414.1 A. In addition to the admissions requirements of Section 1414 of this title, the Greer Center Facility located on the grounds of the Northern Oklahoma Resource Center of Enid in Enid, Oklahoma, shall be established as a separate entity from the Northern Oklahoma Resource Center of Enid and further shall provide for the admission of persons who have been dually diagnosed as follows:

1. Primary diagnosis of mental retardation by a psychologist, physician or psychiatrist. The diagnosis shall be in accordance with any statutory requirements and shall include intellectual evaluation, adaptive behavior evaluation, and evidence that retardation occurred within the developmental period. Preference shall be given for those individuals whose retardation level falls within the mild and moderate ranges; and

2. Secondly, clinical evidence of behavioral or emotional problems pursuant to a formal, written evaluation by a psychologist, psychiatrist or physician describing the nature of the problem, the frequency of occurrence of the problem, any prior treatment efforts and reasons why the applicant cannot receive appropriate treatment in the applicant's current environment and a secondary diagnosis of mental illness in accordance with the Diagnostic and Statistical Manual of Mental Disorders, as revised and published by the American Psychiatric Association.

B. ~~Persons with pending criminal charges~~ A person shall not be considered for voluntary admission into the Greer Center Facility unless it can be clinically demonstrated that the behavior of the person does not pose an ~~immediate danger to self or~~ unreasonable risk of injury, death or sexual assault to others or unreasonable risk of injury or death to self. Persons considered for admission shall not be considered by a psychologist, psychiatrist, or physician as homicidal or suicidal and shall not have exhibited homicidal or suicidal tendencies for six (6) months prior to application for admission.

C. An applicant shall not be admitted to the Greer Center Facility if the applicant requires skilled nursing care. Applicants having a medical condition which is degenerative in nature that will require skilled nursing shall be considered on a case by case basis to ensure that sufficient staff is available to ensure quality of care. If an applicant has any existing medical or surgical

condition that is correctable, the condition shall be remedied by the referring facility before admission to the Greer Center Facility is considered.

D. Any person seeking admission to the Greer Center Facility for treatment, subject to the availability of space, shall be admitted. All persons admitted to the Greer Center Facility shall submit a referral packet to the director of the Greer Center Facility which contains at a minimum, the following information or records:

1. Results of a current physical exam;
2. Recent physician orders and progress notes (up to one (1) year if available);
3. Recent nursing notes (up to one (1) year if available);
4. Fact sheet (medical records);
5. Legal papers (birth certificate, marriage certificate, guardianship, etc.);
6. Social history with a recent social evaluation or update (within one (1) year);
7. Psychological exam administered or updated within ninety (90) days of referral;
8. Dental records;
9. Immunization record;
10. ~~Multi-disciplinary~~ Multidisciplinary progress notes (up to one (1) year if available);
11. Medical and medication history; and
12. Individual Habilitation Plan or Care Plan (if available).

E. The Greer Center Admissions Committee shall consist of a representative from the Department of Mental Health and Substance Abuse Services, a representative from the Greer Center Facility, and an independent psychologist or psychiatrist on contract with the Department of Human Services. The Committee shall make decisions regarding admissions to the programs of the Greer Center Facility.

The Committee may request additional information concerning an applicant from the referring agency or participation by referring agency personnel as necessary.

F. Persons entering the Greer Center Facility shall receive a comprehensive evaluation of their intellectual functioning, adaptive behavior skills, and mental health status, and shall receive a continuous active treatment program, which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services. The evaluation and assessment shall be completed within thirty (30) days of admission to the Greer Center Facility.

G. After the evaluation and assessment by the Greer Center Facility, staff shall present the individual's referral packet and their findings to the Greer Center Admissions Committee with a recommendation for continued admission or alternate treatment. The Admissions Committee shall make decisions regarding continued admission and shall notify the Department of Human Services, the Department of Mental Health and Substance Abuse Services and the referring agency in writing, stating specifically the decisions of the Committee regarding admission, including specific reasons for denial of admission. If an applicant's admission is not continued at the Greer Center Facility after undergoing the evaluation process, the referring agency shall reimburse the Department of Human Services for the number of bed days used at the Medicaid rate for that unit. If an applicant's admission is continued, the applicant shall be certified for Medicaid reimbursement from the initial date of admission.

H. Individuals who have been admitted and served by the Greer Center Facility shall be eligible for readmission services on the same basis as an individual initially seeking services.

I. In addition to other discharge procedures and requirements provided by law, the interdisciplinary team of the Greer Center

Facility shall have recommended discharge based upon a determination that the individual's mental or physical condition prevents the individual from receiving appropriate services at the Greer Center Facility and the individual shall have completed all primary goals of the individual's habilitation plan. The Developmental Disabilities Services Community Services Unit from the individual's placement area shall be consulted in the recommendations for placement and shall be responsible for coordinating the placement and follow up.

J. The Commission is authorized and hereby directed to promulgate and amend rules and regulations necessary to implement the provisions of this section.

SECTION 4. AMENDATORY 10 O.S. 1991, Section 1415.1, as amended by Section 1, Chapter 137, O.S.L. 1996 (10 O.S. Supp. 1996, Section 1415.1), is amended to read as follows:

Section 1415.1 A. 1. All institutions named in Section 1406 of this title within the Department of Human Services, which are established primarily for the purpose of caring for the mentally retarded, shall maintain an adequate clinical record of each resident. Such record shall contain initial social, psychological, and medical evaluation results, as well as interval reports of the resident's condition, the treatment and training prescribed, and the progress shown.

2. ~~The program for care and treatment established at such institutions shall meet, but not be limited to, the standards for accreditation published by the Accreditation Council for Services for Mentally Retarded and Other Developmentally Disabled Individuals which pertain to behavior management. The Department shall arrange for regular, periodic surveys at such institutions for the purpose of ascertaining compliance with the standards of the Accreditation Council. Reports of the survey results shall be provided to the Commission and to the Director, and shall be filed with the Office~~

~~of Juvenile System Oversight of the Oklahoma Commission on Children and Youth.~~

3. The Commission shall establish an ombudsman program for each of the institutions and residential facilities for the mentally retarded operated by the Department, which shall include, but not be limited to, an appeals procedure for the resolution of grievances or complaints of the residents of the institutions and facilities and the grievances or complaints of the parents or the court-appointed guardians of the residents.

B. The educational and physical capabilities of each resident shall be assessed at least one time each year by appropriate professional personnel for the purpose of determining such further treatment or training as may be required. A report of the findings and recommendations of such assessments shall be filed in the clinical record of the resident. Failure on the part of the superintendent of the institution to institute a policy of annual evaluations, if sufficient personnel are available, shall constitute dereliction of duty.

C. When annual evaluations of a resident reflect improvement in social or physical capabilities sufficient enough to permit the resident to be released from the institution, either completely or conditionally, the superintendent shall return such resident to the resident's immediate family, or shall provide assistance for the placement of the resident in some other appropriate residential setting.

D. 1. The Department of Human Services may enter into contracts for the development of residential settings and attendant community services prior to the release of the resident.

2. The Department shall establish procedures which specify the conditions and requirements for recipients of such contracts. In establishing reimbursement rates for recipients of such contracts, the Department may take into consideration any unusual or increased

costs of the recipient relating to the care and treatment of developmentally disabled clients including, but not limited to, workers' compensation costs.

3. A copy of these procedures shall be made available to any person upon request.

E. Reports of the reviews of the administration of psychotropic medications shall be made available to the parent or the court-appointed guardian of a resident of the institutions. The parent or the court-appointed guardian of a resident of the institution shall have access to all clinical records pertaining to the condition, treatment, training, and education of the resident which are maintained at the institution, or elsewhere, by the Department of Human Services.

F. 1. In addition to any other form of assistance provided, the Department is authorized to pay stipends to eligible relatives and certified volunteers for the sole purpose of acquiring legal representation to initiate guardianship proceedings.

2. Financial guidelines and other criteria pertaining to eligibility of relatives and certified volunteers applying for a stipend shall be established by rules promulgated by the Department.

SECTION 5. AMENDATORY 22 O.S. 1991, Section 1175.6, is amended to read as follows:

Section 1175.6 A. Upon the finding by the jury or the court as provided by Section 1175.5 of this title, the court shall issue the appropriate order regarding the person.

1. If the person is found to be competent, the criminal proceedings shall be resumed;

2. If the person is found to be incompetent, but capable of achieving competence with treatment, therapy, or training, the court shall ~~remand~~ refer the person to the Department of Mental Health and Substance Abuse Services, the Department of Human Services, other appropriate state agencies or a private care provider for

consideration of voluntary appropriate treatment, therapy, or training;

3. If the person is found to be incompetent and not capable of achieving competency within a reasonable period of time, and a person requiring treatment as defined by Title 43A of the Oklahoma Statutes, then the court shall order treatment as if there had been a finding pursuant to Title 43A of the Oklahoma Statutes that the defendant was a mentally ill person requiring treatment, without any further proceedings, and shall suspend the criminal proceeding. The Department of Mental Health and Substance Abuse Services or other agency providing treatment to the person or the institution wherein the person is confined or treated shall make periodic reports to the court as to the competency of the defendant. If the agency or institution reports that the person appears to have achieved competency, the court shall hold another competency hearing to determine if the person has achieved competency. If competency has been achieved, the criminal proceeding shall be resumed; and

4. If the person is found to be incompetent, and not capable of achieving competency within a reasonable period of time, but is not a person requiring treatment as defined by Title 43A of the Oklahoma Statutes and is not a threat to himself or society, the court shall ~~remand~~ refer the person to the Department of Human Services for consideration of voluntary assistance, subject to assistance from any other appropriate state agencies and shall suspend the criminal proceedings. The Department of Human Services shall make periodic reports to the court as to the status and activities of the person. If the Department of Human Services reports that the person appears to have achieved competency, the court shall hold another competency hearing to determine if the person has achieved competency. If competency has been achieved, the criminal proceeding shall be resumed.

B. Any person arrested and charged with a criminal offense which is punishable by death, life imprisonment or life imprisonment without parole, who is found to be incompetent by the court and ordered into the custody of the Department of Mental Health and Substance Abuse Services pursuant to paragraphs 2 or 3 of subsection A of this section, shall be placed in a maximum security ward of the mental health facility designated by the Department of Mental Health and Substance Abuse Services until such time as said person is adjudicated to be competent or is adjudicated no longer determined to be a threat to any other person.

SECTION 6. AMENDATORY 22 O.S. 1991, Section 1175.7, is amended to read as follows:

Section 1175.7 A. If the person is found incompetent, but capable of achieving competency within a reasonable period of time, as defined by the court, the court shall order such person to undergo such treatment, therapy or training which is calculated to allow the person to achieve competence.

B. The court shall appoint a medical supervisor for a course of treatment. The medical supervisor of treatment may be any person or agency that agrees to supervise the course of treatment. The proposed treatment may be either inpatient or outpatient care depending on the facilities and resources available to the court and the type of disability sought to be corrected by the court's order. The court may require the supervisor to provide periodic progress reports to the court and may pay for the services of the medical supervisor from court funds.

C. The court may commit the incompetent person to the custody of the Department of Mental Health and Substance Abuse Services or other appropriate state agency, if the court, after the hearing provided in Section 1175.4 of this title, determines that such commitment is necessary for the effective administration of the

treatment ordered, or if the court determines that the defendant is dangerous to himself or society.

D. The court may allow the person to receive treatment from private facilities if such facilities are willing, and neither the state nor the court fund is required to directly pay for such care.

E. In no event shall an incompetent individual be involuntarily committed to any agency or institution due to mental retardation.

SECTION 7. AMENDATORY Section 2, Chapter 291, O.S.L. 1992 (56 O.S. Supp. 1996, Section 227), is amended to read as follows:

Section 227. A. The Developmental Disabilities Services Division within the Department of Human Services is hereby directed to offer a preference to qualified corporations within the state to provide residential or vocational services to residents of this state who have developmental disabilities. The Commission for Human Services is hereby authorized to promulgate rules to implement the provisions of this act, provided such rules shall not unduly interfere with interstate commerce or discriminate against out-of-state corporations.

B. A qualified corporation shall:

1. Conduct at least fifty-one percent (51%) of its financial business within the State of Oklahoma, including both receipt and disbursement transactions;

2. Have its principal place of business within the State of Oklahoma and have on file in the Office of the Secretary of State of Oklahoma a certificate of incorporation or a certificate of qualification of foreign incorporation;

3. Provide residential or vocational services, or both, as determined by the Department of Human Services to the residents of this state who have developmental disabilities;

4. Be identified on a list maintained by the Developmental Disabilities Services Division of the Department of Human Services.

This list shall include those corporations which demonstrate the capacity to maintain fiscal solvency, as determined by the Department of Human Services, and, if the corporation has been in existence for two or more years, the corporation's capacity to maintain fiscal solvency must be verified by two (2) or more annual financial audits, conducted by an independent certified public accountant;

5. Have a history of ethical business practices as established by a peer review panel, if prior business operations have been conducted. Complaints relating to ethical practices shall be reviewed by a peer review panel of five (5) members, to be appointed annually by the Administrator of the Developmental Disabilities Services Division. Members of the panel may be reappointed. The panel shall:

- a. develop criteria to determine ethical business practices for qualified corporations,
- b. determine compliance of qualified corporations with such criteria, ~~and~~
- c. make recommendations to the Administrator of the Developmental Disabilities Services Division, who shall take appropriate action to remedy any unethical behavior, and
- d. maintain confidentiality in the review of complaints relating to ethical practices in determining qualified corporations throughout the review process, except to:
 - (1) employees of other state and federal agencies in the course of their official duties pertaining or relating to such review process, services, or residents,
 - (2) the members of the Legislature or its staff, and
 - (3) the office of the Governor; and

6. Be in full compliance with all assurances and monitoring standards required by the Department of Human Services or other relevant state and federal licensing and certification requirements.

C. The Department of Human Services shall be allowed discretion in its choice of providers for residential or vocational services, or both, when none of the qualified corporations can or are willing to provide such services.

D. The Developmental Disabilities Services Division shall not be prohibited from contracting with any new community-based nonprofit corporation to provide residential or vocational services in an unserved community.

E. The Developmental Disabilities Services Division shall be authorized to provide technical assistance, either directly or through the use of qualified consultants, to enhance the ability of Oklahoma-based corporations to provide new, innovative and effective services to residents of this state who have developmental disabilities.

SECTION 8. 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 9. 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 10 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 10 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, 1998.

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 10. 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 9 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 substantiated 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 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;

11. A group home, as such term is defined by the Group Homes for Persons with Developmental or Physical Disabilities Act; and

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 11. 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 12. 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, 1998, 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 13. 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 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5020.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Health Care Authority shall amend the state Medicaid plan to provide a funding source for payment of temporary managers or state monitors in facilities certified to provide long-term care services and community-based service provider facilities under Medicaid, upon request of the Department of Human Services pursuant to 42 U.S.C.A., Section 1396r(h)(z).

SECTION 15. This act shall become effective November 1, 1997.

46-1-6239

KSM