STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1272 By: Seikel

COMMITTEE SUBSTITUTE

An Act relating to persons with developmental disabilities; amending 30 O.S. 1991, Section 1-122, as amended by Section 1, Chapter 395, O.S.L. 1992 (30 O.S. Supp. 1998, Section 1-122), which relates to guardianships; adding to list of entities which may receive confidential information; amending Section 12, Chapter 407, O.S.L. 1997 (56 O.S. Supp. 1998, Section 1025.2), which relates to certain community services providers; clarifying when notice and opportunity for due process is given; amending Section 6, Chapter 223, O.S.L. 1997 (63 O.S. Supp. 1998, Section 1-890.6), which relates to the Continuum of Care and Assisted Living Act; adding to list of entities not subject to act; and providing an effective date.

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

SECTION 1. AMENDATORY 30 O.S. 1991, Section 1-122, as amended by Section 1, Chapter 395, O.S.L. 1992 (30 O.S. Supp. 1998, Section 1-122), is amended to read as follows:

Section 1-122. A. Confidential information filed with or submitted to the court in conjunction with any proceeding pursuant to the Oklahoma Guardianship and Conservatorship Act, ~~Section 1-101 et seq. of this title,~~ shall not constitute a public record and shall be sealed by the court. Access to confidential information shall be strictly controlled. Except upon court order, no confidential information shall be disclosed to persons other than:

1. The subject of the proceeding and ~~his~~ the subject's attorney;

2. The guardian ad litem;

3. If the subject of the confidential information is a ward, the guardian or conservator of such ward;

4. If the subject of the confidential information is the guardian or conservator, the ward and ~~his~~ the subject's attorney, and the attorney of such guardian or conservator;

5. Abstractors licensed pursuant to the Oklahoma Abstractors Law, ~~Section 227.10 et seq. of Title 74 of the Oklahoma Statutes,~~ for the purpose of having access to records regarding minors and determinations of persons as incapacitated or partially incapacitated persons pursuant to the Oklahoma Guardianship Act. Abstractor shall maintain the confidentiality of this data, except for such parts as are relevant to the land title being researched; ~~and~~

6. An authorized representative of the United States Department of Veterans Affairs upon proper identification; and

7. An authorized representative of the Oklahoma Department of Human Services upon proper identification.

B. The fact of the existence of a guardianship or conservatorship of a person or that person's estate shall not be considered confidential information.

SECTION 2. AMENDATORY Section 12, Chapter 407, O.S.L. 1997 (56 O.S. Supp. 1998, Section 1025.2), is amended to read as follows:

Section 1025.2 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 applicant to provide health-related services, training, or supportive assistance to a person with a developmental disability, the community services provider shall:

a. provide, prior to a check with the Department of Human Services, for a criminal history records search to be made on the community services worker applicant or

contractor pursuant to the provisions of this section, and

b. check with the Department of Human Services to determine if the name of the applicant seeking employment or contract has been entered on the community services worker registry created pursuant to Section ~~13~~ 1025.3 of this ~~act~~ title. Prior to a decision by the Department ~~not~~ to enter the name of a community services worker on such registry, the Department shall allow for notice and opportunity for due process for such community services worker against whom a final investigative finding by the Department of Human Services or a finding by an Administrative Law Judge of abuse, neglect, or exploitation of an individual has been made. The Department of Human Services is authorized to charge a community services provider a reasonable fee for access to the registry. If the name of the applicant seeking employment or a contract with the community services provider is listed on the registry as having a final Department of Human Services investigative finding or a finding by an Administrative Law Judge pursuant to the requirements of Section ~~13~~ 1025.3 of this ~~act~~ title, and the Department has allowed for notice and opportunity for due process for such applicant, the provider shall not hire the applicant.

2. A community services provider is authorized to obtain records of any criminal conviction, guilty plea, or plea of nolo contendere maintained by the Oklahoma State Bureau of Investigation which the employer is required or authorized to request pursuant to the provisions of this section.

3. The community services provider shall request the Bureau to conduct a criminal history records search on a community services worker desiring employment or a contract with the provider and shall provide to the Bureau any relevant information required by the Bureau to conduct the search. The community services provider shall pay a reasonable fee to the Bureau for each criminal history records search that is conducted pursuant to such a request, such fee to be determined by the Oklahoma State Bureau of Investigation.

4. The requirement of a criminal history records search 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, or

h. an occupational therapist licensed pursuant to the Occupational Therapy Practice Act.

B. At the request of the community services provider, the Bureau shall conduct a criminal history records search on any applicant desiring employment or a contract pursuant to subsection A of this section or any worker employed by the community services provider, including any of the workers specified in paragraph 4 of

subsection A of this section, at any time during the period of employment of such worker with the provider.

C. A community services provider may make an offer of temporary employment to a community services worker pending the results of such criminal history records search and the registry review on the applicant. The community services provider in such instance shall provide to the Bureau the name and relevant information relating to the applicant within seventy-two (72) hours after the date the applicant accepts temporary employment. Temporary employment shall not exceed thirty (30) days. The community services provider shall not hire or contract with an applicant as a community services worker on a permanent basis until the results of the criminal history records search and the registry review are received.

D. Within five (5) days of receipt of a request to conduct a criminal history records search, the Bureau shall complete the criminal history records search and report the results of the search to the requesting community services provider.

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

F. 1. If the results of any criminal history records search from any jurisdiction reveals that the subject worker or applicant has been convicted, or pled guilty or nolo contendere to a felony or misdemeanor, the employer shall not hire or contract with the applicant, but shall immediately terminate the community services worker's employment, contract, or volunteer arrangement, subject to the provisions of paragraph 2 of this subsection.

2. The community services provider may request, in writing, a waiver of the provisions of paragraph 1 of this subsection from the Director of the Department of Human Services, or a designee of the Director, and such provisions may be waived in writing by the Director of the Department of Human Services or a designee of the Director. The Director or a designee of the Director may waive the provisions based upon standards promulgated by the Commission for Human Services. No waiver shall be granted for offenses resulting in a felony conviction or plea of guilty or nolo contendere to a felony that occurred less than five (5) calendar years prior to the date of request. In no case shall a waiver be granted for employment of a community services worker who has been convicted of, or pled guilty or nolo contendere to, a felony count of aggravated assault and battery, homicide, murder, attempted murder, rape, incest, sodomy, or abuse, neglect, or financial exploitation of any person entrusted to the worker's care.

G. All criminal history 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 chapter or upon court order or with the written consent of the person being investigated, the criminal history records shall not be released or otherwise disclosed to any other person or agency.

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

I. 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 conduct a criminal history records search to ensure such community services provider is in compliance with the provisions of this section.

SECTION 3. AMENDATORY Section 6, Chapter 223, O.S.L. 1997 (63 O.S. Supp. 1998, Section 1-890.6), is amended to read as follows:

Section 1-890.6 A. The Continuum of Care and Assisted Living Act shall not apply to residential care homes, adult companion homes, domiciliary care units operated by the Department of Veterans Affairs, the private residences of persons with developmental disabilities receiving services provided by the Developmental Disabilities Services Division of the Department of Human Services or through the Home- and Community-Based Waiver or the Alternative Disposition Plan Waiver of the Oklahoma Health Care Authority, or to hotels, motels, boardinghouses, rooming houses, or other places that furnish board or room to their residents. The Continuum of Care and Assisted Living Act shall not apply to facilities not charging or receiving periodic compensation for services rendered and not receiving any county, state or federal assistance.

B. The Commissioner may ban admissions to, or deny, suspend, refuse to renew or revoke the license of, any continuum of care facility or assisted living center which fails to comply with the Continuum of Care and Assisted Living Act or rules promulgated by the Board.

C. Any person who has been determined by the Commissioner to have violated any provision of the Continuum of Care and Assisted Living Act or any rule promulgated hereunder shall be liable for an administrative penalty of not more than Five Hundred Dollars ($500.00) for each day that said violation occurs.

D. If a continuum of care facility's failure to comply with the Continuum of Care and Assisted Living Act or rules involves nursing care services, the Commissioner shall have authority to exercise additional remedies provided under the Nursing Home Care Act. If a continuum of care facility's failure to comply with the Continuum of Care and Assisted Living Act or rules involves adult day care

services, then the Commissioner shall have authority to exercise additional remedies provided under the Adult Day Care Act.

E. In taking any action to deny, suspend, deny renewal, or revoke a license, or to impose an administrative fee, the Commissioner shall comply with requirements of the Administrative Procedures Act.

SECTION 4. This act shall become effective November 1, 1999.

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