ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 732 By: Cain of the Senate

and

Gilbert of the House

An Act relating to mental health and poor persons; amending 43A O.S. 1991, Section 10-103, as last amended by Section 3, Chapter 298, O.S.L. 1998 (43A O.S. Supp. 2000, Section 10-103), which relates to the Protective Services for Vulnerable Adults Act; modifying and expanding definitions; amending Section 13, Chapter 407, O.S.L. 1997 (56 O.S. Supp. 2000, Section 1025.3), which relates to the community services worker registry; expanding registry to include workers found to have committed verbal abuse; allowing judicial review of finding of verbal abuse; amending 63 O.S. 1991, Section 1-1918, as last amended by Section 4, Chapter 231, O.S.L. 1996 (63 O.S. Supp. 2000, Section 1-1918), which relates to rights and responsibilities; * * * amending 63 O.S. 1991, Section 1-1920, which relates to nursing facility resident's funds; * * * amending 63 O.S. 1991, Section 1-1950.1, as last amended by Section 5, Chapter 249, O.S.L. 1992 and Section 23, Chapter 340, O.S.L. 2000 (63 O.S. Supp. 2000, Sections 1-1950.1 and 1-1950.4), which relate to criminal arrest check and uniform employment application; * * * providing for codification; and declaring an emergency.

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill and insert

"(Department of Human Services - community services worker registry - Medicaid personal care assistant -

effective date)

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

SECTION 1. AMENDATORY 56 O.S. 2001, Section 1025.1, is amended to read as follows:

Section 1025.1 For the 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 a community-based program, corporation, or individual who contracts with, or is licensed or funded by, the Department of Human Services to provide residential or vocational services to persons with mental retardation or developmental disabilities, or contracts with the Oklahoma Health Care Authority to provide services to individuals with mental retardation through the Home and Community-Based Waiver, except a private ICF/MR;

4. "Community services worker" ~~or "worker"~~ means any person employed by or under contract with a community services provider ~~to provide~~ <u>who provides</u>, for compensation or as a volunteer, health-related services, training, or supportive assistance to persons with developmental disabilities, and who is not a licensed 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~~

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~~ activities of daily living as necessary for the health and comfort of persons with developmental disabilities;

9. “Personal care” means a level of assistance provided in the homes of individuals to meet their activity of daily living needs such as bathing, grooming, meal preparation, light housekeeping, laundry, and care plan directed errands;

10. “Medicaid personal care services provider” means a program, corporation, or individual who provides Medicaid State Plan personal care program or Advantage Waiver services to individuals who are elderly or who have a physical disability; and

11. "Medicaid personal care assistant" means a person who provides Medicaid-funded personal care services who is not a certified nurse aide or a licensed professional.

SECTION 2. AMENDATORY 56 O.S. 2001, 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 or Medicaid personal care services provider makes an offer to employ or to contract with a community services worker applicant or a Medicaid personal care assistant applicant to provide health-related services, training, or supportive assistance to a person with a developmental disability, or personal care services to a person who receives the services of the Personal Care program, the community services provider or Medicaid personal care 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 Medicaid personal care assistant 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 1025.3 of this title. Prior to a decision by the Department to enter the name of a community services worker or a Medicaid personal care assistant on such registry, the Department shall allow for notice and opportunity for due process for such community services worker or a Medicaid personal care assistant 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 or a Medicaid personal care assistant a reasonable fee for access to the registry. If the name of the applicant seeking employment or a contract with the community services provider or Medicaid personal care assistant 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 1025.3 of this title, and the Department has allowed for notice and opportunity for due process for such applicant, the provider shall not hire the applicant.

2. If the Department of Human Services contracts directly with a Medicaid personal care assistant, the Department shall follow screening procedures which are required by this section for Medicaid personal care services providers.

3. 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.

4. A Medicaid personal care services provider shall request the Bureau to conduct a criminal background check on Medicaid personal care assistants pursuant to Section 1-1950.1 of Title 63 of the Oklahoma Statutes.

~~3.~~ 5. 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~~. Such fee ~~to~~ shall be determined by the Oklahoma State Bureau of Investigation.

~~4.~~ 6. 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~~ 6 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 and Medicaid personal care services provider shall inform each applicant for employment, or each prospective contract worker, as applicable, that the community services provider or Medicaid personal care 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 Medicaid personal care assistant 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 assault and battery, 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 or Medicaid personal care services provider are for the exclusive use of the Department of Human Services and the community services provider or Medicaid personal care 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 or Medicaid personal care 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 56 O.S. 2001, Section 1025.3, is amended to read as follows:

Section 1025.3 A. The Commission for Human Services ~~may~~ shall promulgate rules to establish and maintain a community services worker registry. Such rules may include, but need not be limited to:

1. A procedure for notation in such registry of a final Department of Human Services investigative finding or a finding by an Administrative Law Judge of abuse, neglect, verbal abuse, or exploitation as these terms are defined in Section 10-103 of Title 43A of the Oklahoma Statutes, of an individual by a community services worker or a Medicaid personal care assistant;

2. A procedure for notice and due process for a community services worker, or a Medicaid personal care assistant, or applicant before the entering of such person's name in the registry as having a final Department of Human Services investigative finding or Administrative Law Judge finding of abuse, neglect, verbal abuse, or exploitation of an individual;

3. Disclosure requirements for information in the registry; and

4. Procedures for granting a waiver of the provisions of paragraph 1 of subsection F of Section 1025.2 of this title by the Director of Human Services.

B. The community services worker registry shall include, but not be limited to, the following information on each community services worker and each Medicaid personal care assistant:

1. The individual's full name;

2. Information necessary to identify each individual;

3. The date the individual's name was placed in the registry; and

4. Information on any final Department of Human Services investigative finding or Administrative Law Judge finding of abuse, neglect, verbal abuse or exploitation as these terms are defined in

Section 10-103 of Title 43A of the Oklahoma Statutes concerning the worker.

C. A community services worker, a Medicaid personal care assistant, or applicant who is adversely affected by an Administrative Law Judge finding of abuse, neglect, verbal abuse or exploitation of an individual may seek judicial review pursuant to Article II of the Administrative Procedures Act. The finding of the Administrative Law Judge may be appealed to the district court in which the community services worker, Medicaid personal care assistant, or applicant resides within thirty (30) days of the date of the decision. A copy of the petition shall be served by mail upon the general counsel of the Department of Human Services.

SECTION 4. This act shall become effective November 1, 2002."

Passed the House of Representatives the 24th day of April, 2002.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2002.

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Presiding Officer of the Senate