

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 732

By: Cain

AS INTRODUCED

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 1-1920, which relates to nursing facility resident's funds; requiring facility or home to accurately document certain funds; providing for crime for failure to accurately document certain 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; requiring employer to provide for a national fingerprint criminal background check for nurse aides and specified persons before making offer to contract with or employ such persons and inserting conforming language; providing for crime for false information or failure to disclose specified information on nursing home employment application; requiring specified notification; requiring maintenance of updated listing of all nursing home employees; prohibiting solicitation or acceptance of anything of value by nurse aide from specified persons; defining term; providing penalty for specified crime; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 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), is amended to read as follows:

Section 10-103. A. When used in the Protective Services for Vulnerable Adults Act:

1. "Protective services" means services which are necessary to aid a vulnerable adult in meeting the essential requirements for mental or physical health and safety which such person is unable to provide or obtain without assistance and includes services provided to or obtained for such person in order to prevent or remedy the abuse, neglect, or exploitation of such person;

2. "Services which are necessary to aid an individual to meet essential requirements for mental or physical health and safety" include, but shall not be limited to, the identification of vulnerable adults in need of the services, the provision of medical care for physical and mental health needs, provision of social services assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment, guardianship referral, outreach and transportation necessary to secure any of such needs. The term shall not include taking the person into physical custody without the consent of the person except as provided for in Section 10-107 of this title, and evaluation, monitoring, and provision of protective placements;

3. "Meet essential requirements for mental or physical health and safety" means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which physical injury or illness is likely to occur;

4. "Incapacitated person" means:

- a. any person eighteen (18) years of age or older who is impaired by reason of mental or physical illness or disability, dementia or related disease, mental retardation, developmental disability or other cause and whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that they lack the capacity to manage their financial resources or to

meet essential requirements for their mental or physical health or safety without assistance from others, or

- b. a person for whom a guardian, limited guardian, or conservator has been appointed pursuant to the Oklahoma Guardianship and Conservatorship Act;

5. "Vulnerable adult" means an individual who is an incapacitated person or who, because of physical or mental disability, incapacity, or other disability, is substantially impaired in the ability to provide adequately for the care or custody of self, or is unable to manage his or her property and financial affairs effectively, or to meet essential requirements for mental or physical health or safety, or to protect self from abuse, neglect, or exploitation without assistance from others;

6. "~~Caretaker~~" "Caregiver" means a person who has:

- a. the responsibility for the care of ~~the person~~ a vulnerable adult or financial management of the resources of ~~the~~ a vulnerable adult as a result of a family relationship,
- b. assumed the responsibility for the care of ~~the~~ a vulnerable adult voluntarily, by contract, or as a result of the ties of friendship, or
- c. been appointed a guardian, limited guardian, or conservator pursuant to the Oklahoma Guardianship and Conservatorship Act;

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

8. "Abuse" means willfully causing or permitting:

- a. the ~~intentional~~ infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, or mental anguish, or
- b. the deprivation of ~~food~~ nutrition, clothing, shelter, ~~or medical~~ health care, or other care or services

without which serious physical or mental injury is likely to occur to a vulnerable adult by a ~~caretaker~~ caregiver or other person ~~responsible for~~ providing ~~these services~~ to a vulnerable adult;

9. "Exploitation" or "exploit" means an unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense;

10. "Neglect" means:

a. the failure to provide protection for a vulnerable adult who is unable to protect ~~the person's~~ his or her own interest; ~~or,~~

b. the failure to provide a vulnerable adult with adequate shelter, nutrition, health care, or clothing; ~~or~~

c. ~~the harming or threatening with~~ causing or permitting of harm or the risk of harm to a vulnerable adult through the action ~~or,~~ inaction ~~by either another individual or through the person's own action or inaction because of a lack of awareness, incompetence, or incapacity, which has resulted or may result in physical or mental injury,~~ or lack of supervision by a caregiver providing direct services; and

11. "Sexual abuse" means:

a. oral, anal, or vaginal penetration of a vulnerable adult by or through the union with the sexual organ of ~~another~~ a caregiver or other person providing services to the vulnerable adult, or the anal or vaginal penetration of ~~another~~ by a vulnerable adult by a caregiver or other person providing services to the vulnerable adult with any other object, ~~or,~~

- b. for the purpose of sexual gratification, the touching ~~or~~, feeling or observation of the body or private parts of another a vulnerable adult by a caregiver or other person providing services to the vulnerable adult, or
- c. indecent exposure by a caregiver or other person providing services to the vulnerable adult;

12. "Indecent exposure" means forcing or requiring a vulnerable adult to:

- a. look upon the body or private parts of another person or upon sexual acts performed in the presence of the vulnerable adult, or
- b. touch or feel the body or private parts of another;

13. "Self-neglect" means the action or inaction of a vulnerable adult which causes that person to fail to meet the essential requirements for physical or mental health and safety due to the vulnerable adult's lack of awareness, incompetence or incapacity;

14. "Omission of due care" means a mistake, error or oversight by a caregiver that deviates from or violates a plan of care, written rules, regulations, directives, policies, procedures, statutes, accepted professional standards and practices, or the care which a reasonable person would provide under the circumstances, where there was no intent to harm and there was no harm or risk of harm to the vulnerable adult;

15. "Sexual exploitation" includes, but is not limited to, a caregiver's causing, allowing, permitting or encouraging a vulnerable adult to engage in prostitution or in the lewd, obscene, or pornographic photographic, filming or depiction of the vulnerable adult as those acts are defined by state law; and

16. "Verbal abuse" means use of words, sounds, or other communication including, but not limited to, gestures, actions or behaviors, by a caregiver or other person providing services to a

vulnerable adult that are likely to cause a reasonable person to experience humiliation, intimidation, fear, embarrassment, shame or degradation.

B. Nothing in this section shall be construed to mean a vulnerable adult is abused or neglected for the sole reason the vulnerable adult, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the practices of a recognized religious method of healing, for the treatment or cure of disease or remedial care, or a ~~caretaker~~ caregiver or other person responsible, in good faith, is furnishing such vulnerable adult spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, for the treatment or cure of disease or remedial care in accordance with the practices of or express consent of the vulnerable adult.

SECTION 2. AMENDATORY Section 13, Chapter 407, O.S.L. 1997 (56 O.S. Supp. 2000, Section 1025.3), is amended to read as follows:

Section 1025.3 A. ~~Within one hundred eighty (180) days following the effective date of this act, the~~ The Commission for Human Services ~~shall~~ may promulgate rules to establish and maintain a community services worker registry. Such rules ~~will~~ may include, but shall 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;

2. A procedure for notice and due process for a community services worker 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 ~~12~~ 1025.2 of this ~~act~~ 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:

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, ~~exploitation, or~~ 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 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 under Section 318 et seq. of Title 75 of the Oklahoma Statutes. The finding of the Administrative Law Judge may be appealed to the district court in which the community services worker 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 3. AMENDATORY 63 O.S. 1991, Section 1-1920, is amended to read as follows:

Section 1-1920. A. To protect each resident's funds, ~~the~~ a facility or home:

1. Shall reserve a portion of each resident's monthly income, in an amount not less than Twenty-five Dollars (\$25.00), as a personal needs allowance for use by the resident, or for use on behalf of the resident by ~~his~~ a guardian, or other representative designated by the resident;

2. Shall at the time of admission, provide each resident, or ~~his~~ a representative, with a written statement explaining the resident's rights regarding personal funds and listing the services for which the resident will be charged, ~~and~~. The facility or home shall obtain a signed acknowledgment from each resident or ~~his~~ resident's representative that ~~he~~ the resident has received the statement;

3. May accept funds from a resident for safekeeping and managing, if the facility or home receives written authorization from the resident or ~~his~~ a guardian, ~~such~~. The authorization shall be attested to by a witness who has no pecuniary interest in the facility or home or its operations, and who is not connected in any way to facility or home personnel or the administrator in any manner whatsoever;

4. Shall maintain and accurately document all of a resident's personal funds, including all money received and all expenditures, and shall allow each resident and responsible party access to a written record of all financial arrangements and transactions involving the individual resident's funds;

5. Shall provide each resident, or ~~his~~ a representative with a written itemized statement on request, of all financial transactions involving the resident's funds;

6. Shall keep any funds received from a resident for safekeeping in an account separate from the facility's or home's funds and shall maintain such funds as required by the Department of Human Services and federal regulations;



7. Shall return to the resident, upon written request by the resident or ~~his~~ a guardian, if court-appointed, all or any part of the resident's funds given the facility or home for safekeeping, including the interest accrued from deposits;

8. Shall place any monthly allowance to which a resident is entitled in that resident's personal account, or give it to the resident, unless the facility or home has written authorization from the resident or the resident's guardian or if the resident is a minor, ~~his~~ a parent, to handle it differently;

9. Unless otherwise provided by state law, upon the death of a resident, shall provide the administrator or executor of the resident's estate with a complete accounting of all the resident's personal property, including any funds of the resident being held by the facility or home; and

10. If the facility or home is sold, shall provide the buyer with a written verification by a public accountant of all residents' monies and properties being transferred, and obtain a signed receipt from the new owner.

B. Any person who violates any of the provisions of subsection A of this section, upon conviction, shall be guilty of a misdemeanor.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 1-1950.1, as last amended by Section 5, Chapter 249, O.S.L. 1992 (63 O.S. Supp. 2000, Section 1-1950.1), is amended to read as follows:

Section 1-1950.1 A. For purposes of this section:

1. "~~Nurses~~ Nurse aide" means any person who provides, for compensation, nursing care or health-related services to residents in a nursing facility, a specialized facility, a residential care home or an adult day care center and who is not a licensed health professional. Such term also means any person who provides such services to individuals in their own homes as an employee or contract provider of a home health or home care agency, or as a

contract provider of the Nontechnical Medical Care Program of the Oklahoma Department of Human Services;

2. "Employer" means any of the following facilities, homes, agencies or programs which are subject to the ~~provision~~ provisions of this section:

- a. a nursing facility, specialized facility, or residential care home as such terms are defined in Section 1-1902 of this title,
- b. an adult day care center as such term is defined in Section 1-872 of this title,
- c. a home health or home care agency, and
- d. 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;

3. "Home health or home care agency" means any person, partnership, association, corporation or other organization which administers, offers or provides health care services or supportive assistance for compensation to three or more ill, disabled, or infirm persons in the temporary or permanent residence of such persons, and includes any subunits or branch offices of a parent home health or home care agency; and

4. "Bureau" means the Oklahoma State Bureau of Investigation.

B. 1. Except as otherwise provided by subsection C of this section, before any employer makes an offer to employ or to contract with a ~~nurses~~ nurse aide or other person to provide nursing care, health-related services or supportive assistance to any individual except as provided by paragraph 4 of this subsection, the employer shall provide for a criminal arrest check and a national fingerprint criminal background check to be made on the ~~nurses~~ nurse aide or other person pursuant to the provisions of this section. If the employer is a facility, home or institution which is part of a

larger complex of buildings, the requirement of a criminal arrest check and a national fingerprint criminal background 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 D of this section, an employer 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 employer shall request the Bureau to conduct a criminal arrest check and a national fingerprint criminal background check on the person and shall provide to the Bureau any relevant information required by the Bureau to conduct the ~~check~~ checks. The employer shall pay a fee of Ten Dollars (\$10.00) to the Bureau for each criminal arrest check or national fingerprint criminal background 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. a nursing home administrator licensed pursuant to the provisions of Section 330.53 of this title;
- b. 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;
- c. a registered nurse or practical nurse licensed pursuant to the Oklahoma Nursing Practice Act;
- d. a physical therapist registered pursuant to the Physical Therapy Practice Act;
- e. a physical therapist assistant licensed pursuant to the Physical Therapy Practice Act;
- f. a social worker licensed pursuant to the provisions of the Social Workers' Licensing Act;

- g. a speech pathologist or audiologist licensed pursuant to the Speech Pathology and Audiology Licensing Act;
- h. a dietitian licensed pursuant to the provisions of the Licensed Dietitian Act;
- i. an occupational therapist licensed pursuant to the Occupational Therapy Practice Act; or
- j. 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.

5. At the request of an employer, the Bureau shall conduct a criminal arrest check and a national fingerprint criminal background check on any person employed by the employer, including the persons specified in paragraph 4 of this subsection at any time during the period of employment of such person.

C. 1. An employer may make an offer of temporary employment to a ~~nurses~~ nurse aide or other person pending the results of the criminal arrest check on the person. The employer 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 employer shall not hire or contract with a person on a permanent basis until the results of the criminal arrest check or the national fingerprint criminal background check are received.

2. An employer may accept a criminal arrest report or a national fingerprint criminal background report that is less than one (1) year old of a person to whom such employer makes an offer of employment or employment contract. The ~~report~~ reports shall be obtained from the previous employer or contractor of such person and shall only be obtained upon the written consent of such person.

D. 1. The Bureau shall not provide to the employer the criminal arrest or national fingerprint criminal background 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; and
- 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 or a national fingerprint criminal background check, the Bureau shall complete the criminal arrest check or national fingerprint criminal background check and report the results of the ~~check~~ checks to the requesting employer.

E. Every employer who is subject to the provisions of this section shall inform each applicant for employment, or each prospective contract provider, as applicable, that the employer is required to obtain a criminal arrest or national fingerprint criminal background record before making an offer of permanent employment or contract to a ~~nurses~~ nurse aide or other person described in subsection B of this section.

F. 1. If the results of a criminal arrest or national fingerprint criminal background check reveal that the subject person

has been convicted of any of the following offenses, the employer shall not hire 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~~ the person's 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 criminal arrest or national fingerprint criminal background check reveal that an employee or a person hired on a temporary basis pursuant to subsection C of this section or any other person who is an employee or contract provider has been convicted of any of the offenses listed in paragraph 1 of this subsection, the employer shall immediately terminate the person's employment or contract. The provisions of this paragraph shall not

apply to an employee or contract provider of an employer who has completed the requirements for certification and placement on the nurse aide registry and who has been continuously employed by the employer prior to January 1, 1992.

G. An employer 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 employer are confidential and are for the exclusive use of the State Department of Health and the employer which requested the information. Except on 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. These records shall be destroyed after one (1) year from the end of employment of the person to whom such records relate.

I. A prospective employee of a nursing home who provides any false information on a nursing home employment application or who fails to disclose any prior criminal conduct or employee misconduct allegations shall be guilty of a misdemeanor.

J. A nursing home shall immediately notify the Department of all newly hired employees within ten (10) days of the hiring, and the Department shall maintain an updated listing of all nursing home employees.

K. Any person releasing or disclosing any information received pursuant to this section without the authorization prescribed by this section shall be guilty of a misdemeanor.

L. As part of the inspections required by the Nursing Home Care Act, the Residential Care Act, and the Adult Day Care Act, the State Department of Health shall review the employment files of any facility or home required to obtain criminal records to ensure such

facilities or homes are in compliance with the provisions of this section.

SECTION 5. AMENDATORY Section 23, Chapter 340, O.S.L. 2000 (63 O.S. Supp. 2000, Section 1-1950.4), is amended to read as follows:

Section 1-1950.4 A. The State Department of Health, in conjunction with the Office of the State Long-term Care Ombudsman ~~of~~ within the Department of Human Services, shall develop a uniform employment application to be used in the hiring of nurse aide staff by ~~a~~ i:

1. A nursing facility or a specialized facility as such terms are defined in the Nursing Home Care Act, ~~a~~ i;

2. A residential care home, as such term is defined by the Residential Care Act, ~~a~~ i;

3. An assisted living center as such term is defined by the Continuum of Care and Assisted Living Act, ~~a~~ i;

4. A continuum of care facility as defined by the Continuum of Care and Assisted Living Act, ~~a~~ i;

5. A freestanding hospice or program providing hospice services as such terms are defined by the Hospice Licensing Act, ~~a~~ i;

6. An adult day care center as such term is defined by the Adult Day Care Act, ~~i~~ i and ~~a~~

7. A home care agency as defined by the Home Care Act.

Such uniform application shall be used as the only application for employment of nurse aides in such facilities ~~on and after January 1,~~ 2001.

B. The uniform employment application shall be designed to gather all pertinent information for entry into the nurse aide registry maintained by the State Department of Health. The uniform application shall also contain:

1. A signature from the applicant to confirm or deny any previous felony conviction;



2. A release statement for the applicant to sign giving the State Department of Health and the Oklahoma State Bureau of Investigation the authority to proceed with state criminal history record checks; and

3. Such other information deemed necessary by the Department.

C. The Department shall provide implementation training on the use of the uniform employment application.

D. A prospective employee of a nursing home who provides any false information on the uniform employment application or who fails to disclose any prior criminal conduct or employee misconduct allegations shall be guilty of a misdemeanor.

E. A nursing facility shall immediately notify the Department of any newly hired employee within ten (10) working days of the hiring. The Department shall maintain a list of all newly hired employees in nursing facilities.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1950.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

It shall be unlawful for a nurse aide, as defined in Section 1-1950.1 of this title, to solicit or accept anything of value from a resident of any facility where the nurse aide provides nursing care or health-related services.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 843.2 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. As used in this section "verbal abuse" means the use of words, sounds or other communication including, but not limited to, gestures, actions or behaviors by a caregiver or other person providing services to a vulnerable adult that are likely to cause a reasonable person to experience humiliation, intimidation, fear, embarrassment, shame or degradation.

B. Any person convicted of verbal abuse of a vulnerable adult shall be guilty of a misdemeanor.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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CJ

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