

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1017

By: Leist

AS INTRODUCED

An Act relating to poor persons; amending 56 O.S. 2001, Section 222, which relates to certain audits; changing certain responsibility from Department of Public Welfare to the Oklahoma Health Care Authority; amending 56 O.S. 2001, Section 1010.13, which relates to persons authorized to enroll beneficiaries of Medicaid program; clarifying cite; amending 56 O.S. 2001, Section 1025.2, as amended by Section 2, Chapter 378, O.S.L. 2002 (56 O.S. Supp. 2002, Section 1025.2), which relates to community services and Medicaid personal care providers; authorizing Executive Director of Authority to make certain waivers and receive certain information; requiring Department of Human Services to disclose certain information to the State Medicaid Agency; repealing 56 O.S. 2001, Section 223, which relates to the Human Services Medical and Assistance Fund; and declaring an emergency.

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

SECTION 1. AMENDATORY 56 O.S. 2001, Section 222, is amended to read as follows:

Section 222. ~~The auditors~~ Auditors from the ~~Department of Public Welfare~~ Oklahoma Health Care Authority under the direction of the ~~Oklahoma Public Welfare Commission and the Director of Public Welfare~~ are Chief Executive Officer of the Authority shall be authorized and empowered to conduct an audit of the financial records itemized in ~~the~~ a hospital's reimbursable per diem cost records in order to determine whether or not the certified per diem cost is sustained by the detailed financial records of such hospital as to such per diem costs.

SECTION 2. AMENDATORY 56 O.S. 2001, Section 1010.13, is amended to read as follows:

Section 1010.13 A Medicaid beneficiary, including, but not limited to, a beneficiary currently enrolled in a fully or partially capitated managed care delivery model pursuant to the provisions of the Oklahoma Medicaid Healthcare Options System, who is not medically or legally competent may have another person act on the beneficiary's behalf for purposes of enrollment or reenrollment into any of the managed care delivery models. A person so authorized shall be a member of one of the following classes of persons:

1. An authorized representative pursuant to the provisions of 20 U. S. Code of Federal Regulations, ~~Sections 404.1075 through 404.1707~~ Section 404.2021;

2. The beneficiary's spouse;

3. The guardian of the person appointed pursuant to the Oklahoma Guardianship and Conservatorship Act;

4. The attorney-in-fact for health care decisions acting pursuant to the provisions of the Uniform Durable Power of Attorney Act or the health care proxy acting pursuant to the provisions of the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act;

5. A child of the beneficiary who is at least eighteen (18) years of age;

6. A parent of the beneficiary; or

7. A brother or sister of the beneficiary who is at least eighteen (18) years of age.

SECTION 3. AMENDATORY 56 O.S. 2001, Section 1025.2, as amended by Section 2, Chapter 378, O.S.L. 2002 (56 O.S. Supp. 2002, 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 state Medicaid program 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 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 the screening procedures 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 the provisions of Section 1-1950.1 of Title 63 of the Oklahoma Statutes.

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 fee shall be determined by the Oklahoma State Bureau of Investigation.

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 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~~ or the Chief Executive Officer of the Oklahoma Health Care Authority, in all cases the community services worker is a Medicaid provider. 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, the Oklahoma Health Care Authority 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 provider is in compliance with the provisions of this section.

J. The Department of Human Services shall disclose all registry information, all criminal records gathered and any inspections conducted as a result of this section to the State Medicaid Agency upon the request of the State Medicaid Agency.

SECTION 4. REPEALER 56 O.S. 2001, Section 223, is hereby repealed.

SECTION 5. 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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