

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB1854:

Turner

AS INTRODUCED

An Act relating to long-term care facilities; enacting the Oklahoma Long-term Care Administrators Licensing Act; providing short title; amending 63 O.S. 2001, Sections 330.51, 330.52, 330.53, 330.54, 330.56, 330.57, 330.58, 330.59, 330.60, 330.61 and 330.62, which relate to nursing home administrators; modifying definitions; changing name of certain Board; amending 63 O.S. 2001, Section 1-853, which relates to investigative findings; updating terminology; amending 63 O.S. 2001, Section 1-1904, as amended by Section 3, Chapter 230, O.S.L. 2002 (63 O.S. Supp. 2003, Section 1-1904), which relates to licensure of nursing homes; updating terminology; amending 63 O.S. 2001, Section 1-1950.1, which relates to criminal arrest checks; updating terminology; allowing for criminal history checks of certain new employees; requiring certain reviews; repealing 63 O.S. 2001, Section 330.63, which relates to payments to General Revenue Fund; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 330.50 of Title 63, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 12 of this act shall be cited as the "Oklahoma Long-term Care Administrators Licensing Act".

SECTION 2. AMENDATORY 63 O.S. 2001, Section 330.51, is amended to read as follows:

Section 330.51 For the purposes of ~~this act, and as used herein~~ the Oklahoma Long-term Care Administrators Licensing Act:

1. "Board" means the Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-term Care Administrators ~~hereinafter created;~~

2. ~~"Nursing home~~ Long-term care administrator" means a person licensed by the State of Oklahoma ~~who is in charge of a facility pursuant to the Oklahoma Long-term Care Administrators Licensing Act.~~ A ~~nursing home~~ long-term care administrator in charge of a facility must devote at least one-third (1/3) of such person's working time to on-the-job supervision of ~~such~~ the facility; provided that this requirement shall not apply to a nursing home administrator of an intermediate care facility for the mentally retarded with sixteen or fewer beds (ICF-MR/16), in which case the person licensed by the state may be in charge of more than one ICF-MR/16, if such facilities are located within a circle that has a radius of not more than fifteen (15) miles, and the total number of facilities and beds does not exceed six facilities and sixty-four beds. The facilities may be free-standing in a community or may be on campus with a parent institution. The ICF-MR/16 may be independently owned and operated or may be part of a larger institutional ownership and operation;

3. ~~"Nursing home", "rest home" and "specialized home" shall have the same meaning as the term~~ "Long-term care facility" means "nursing facility" as ~~such term is~~ defined in the Nursing Home Care Act;

4. ~~"Administrator" and "owner" shall have the same meanings as such terms are defined in the Nursing Home Care Act~~ "Owner" means a person, corporation, partnership, association, or other entity which owns a facility or leases a facility. The person or entity that has an interest in the financial success or failure of the facility shall be presumed to be the owner of a long-term care facility; ~~and~~

5. "Qualified mental retardation professional" shall be an individual determined by the State Department of Health, pursuant to Section 483.430, 42 C.F.R., to:

- a. have at least one (1) year of experience working directly with persons with mental retardation or other developmental disabilities, and
- b. be one of the following:
 - (1) a doctor of medicine or osteopathy licensed to practice in this state,
 - (2) a registered nurse, or
 - (3) an individual who holds at least a bachelor's degree in a related field; and

6. "Specialized facility" has the same definition as such term is defined in the Nursing Home Care Act.

SECTION 3. AMENDATORY 63 O.S. 2001, Section 330.52, is amended to read as follows:

Section 330.52 A. There is hereby ~~re-created~~ created, to continue until July 1, 2006, in accordance with the provisions of the Oklahoma Sunset Law, the Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-term Care Administrators. The Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-term Care Administrators shall consist of fifteen (15) members, ~~eleven of whom~~ as follows:

1. Eleven members shall be representative of the professions and institutions concerned with the care and treatment of critically ill or infirm elderly patients, ~~two;~~

2. Two members ~~representing~~ shall represent the general public, ~~and the;~~

3. The Commissioner of Health or designee; and ~~the~~

4. The Director of the Department of Human Services, ~~or their~~ designees designee.

B. The thirteen appointive members shall be appointed by the Governor, with the advice and consent of the Senate.

~~B.~~ C. Six of the thirteen appointive members shall each be ~~presently~~ currently an owner ~~and~~ of a long-term care facility, a licensed administrator, and shall have had five (5) years'

experience in the ~~nursing home~~ long-term care profession as an owner and administrator. Two members shall be representatives of the general public and shall not have any direct or indirect financial interest in ~~nursing homes~~ long-term care facilities. The other members shall not be ~~nursing home~~ long-term care facility owners or administrators and shall have no direct financial interest in ~~nursing homes~~ long-term care facilities.

D. The terms of all appointive members shall be three (3) years. Any vacancy occurring in the position of an appointive member shall be filled by the Governor, with the advice and consent of the Senate, for the unexpired term.

SECTION 4. AMENDATORY 63 O.S. 2001, Section 330.53, is amended to read as follows:

Section 330.53 A. The Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-term Care Administrators shall ~~have authority to~~ issue licenses to qualified persons as ~~nursing home~~ long-term care administrators, and shall establish qualification criteria for such ~~nursing home~~ long-term care administrators.

B. No license shall be issued to a person as a ~~nursing home~~ long-term care administrator unless:

1. The person ~~shall have~~ has submitted evidence satisfactory to the Board that the person is:

- a. not less than twenty-one (21) years of age,
- b. of reputable and responsible character, and
- c. in sound physical and mental health; and

2. The person ~~shall have~~ has submitted evidence satisfactory to the Board of the person's ability to supervise a ~~nursing home~~ long-term care facility or specialized ~~home~~ facility.

C. 1. A qualified mental retardation professional, as defined in Section 330.51 of this title, shall be determined to meet the educational requirements as a licensed ~~nursing home~~ long-term care

administrator and shall be eligible to take the National Administrator Board and State Standards Examinations.

2. A qualified mental retardation professional who meets the requirements of paragraph 1 of this subsection may serve as the licensed long-term care administrator for no more than four (4) intermediate care facilities for the mentally retarded with sixteen or less beds (ICF-MR/16).

SECTION 5. AMENDATORY 63 O.S. 2001, Section 330.54, is amended to read as follows:

Section 330.54 Each person licensed as a ~~nursing home~~ long-term care administrator pursuant to the provisions of ~~Section 330.53 of this title~~ the Oklahoma Long-term Care Administrators Licensing Act shall be required to pay an annual license fee which shall be deposited in the Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-term Care Administrators Revolving Fund. Such fee shall be determined by the Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-term Care Administrators in an amount not to exceed Two Hundred Dollars (\$200.00). Each such license shall expire on the 31st day of December following its issuance, and shall be renewable for a calendar year, upon payment of the annual license fee.

SECTION 6. AMENDATORY 63 O.S. 2001, Section 330.56, is amended to read as follows:

Section 330.56 The Oklahoma State Board of Examiners for Long-term Care Administrators shall elect from its membership a president, vice-president, and secretary-treasurer, and shall ~~adopt~~ promulgate rules ~~and regulations~~ to govern its proceedings. Each member shall be allowed necessary travel expenses, as may be approved by the Board pursuant to the State Travel Reimbursement Act. The Board may employ and fix the compensation and duties of necessary personnel to assist it in the performance of its duties.

SECTION 7. AMENDATORY 63 O.S. 2001, Section 330.57, is amended to read as follows:

Section 330.57 A. The Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-term Care Administrators shall have sole and exclusive authority to determine the qualifications, skill and fitness of any person to serve as an administrator of a ~~nursing home~~ long-term care facility or specialized ~~home~~ under the provisions of the Nursing Home Care Act, Section 1-1901 et seq. of this title facility.

B. The holder of a license under the provisions of ~~this act~~ the Oklahoma Long-term Care Administrators Licensing Act shall be deemed qualified to serve as the administrator of a ~~nursing home~~ long-term care facility or specialized ~~home~~ facility.

SECTION 8. AMENDATORY 63 O.S. 2001, Section 330.58, is amended to read as follows:

Section 330.58 The Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-term Care Administrators shall:

~~(a)~~ 1. Develop, impose, and enforce standards which must be met by individuals in order to receive a license as a ~~nursing home~~ long-term care administrator, which standards shall be designed to ensure that ~~nursing home~~ long-term care administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as ~~nursing home~~ long-term care administrators-;

~~(b)~~ 2. Develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards-;

~~(c)~~ 3. Issue licenses to individuals determined, after the application of such techniques, to meet such standards, ~~and revoke;~~

4. Revoke or suspend licenses previously issued by the Board in any case where the individual holding any such license is determined ~~substantially~~ to have substantially failed to conform to the requirements of such standards-;

~~(d)~~ 5. Establish and carry out procedures designed to ensure that individuals licensed as ~~nursing home~~ long-term care administrators will, during any period that they serve as such, comply with the requirements of such standards.;

~~(e)~~ 6. Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the Board to the effect that any individual licensed as a ~~nursing home~~ long-term care administrator has failed to comply with the requirements of such standards. The long-term care ombudsman program of the Aging Services Division of the Department of Human Services shall be notified of all complaint investigations of the Board so that they may be present at any such complaint investigation for the purpose of representing ~~nursing home~~ long-term care facility consumers.;

~~(f)~~ 7. Conduct a continuing study and investigation of ~~nursing homes~~ long-term care facilities and administrators of ~~nursing homes~~ long-term care facilities within the state with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to licensed administrators of ~~nursing homes who have been licensed as such~~ long-term care facilities.

SECTION 9. AMENDATORY 63 O.S. 2001, Section 330.59, is amended to read as follows:

Section 330.59 It shall be unlawful and a misdemeanor for any person to act or serve in the capacity as a ~~nursing home~~ long-term care administrator unless ~~he is the holder of~~ the person holds a license as a ~~nursing home~~ long-term care administrator, issued in accordance with the provisions of ~~this act~~ the Oklahoma Long-term Care Administrators Licensing Act.

SECTION 10. AMENDATORY 63 O.S. 2001, Section 330.60, is amended to read as follows:

Section 330.60 The Board of Examiners for Long-term Care Administrators shall ~~establish such~~ promulgate rules and regulations

governing operations, reporting of fees, and compensation of employees, the maintenance of books, records and manner and time of employee compensation, ~~all as may be in the public interest.~~

SECTION 11. AMENDATORY 63 O.S. 2001, Section 330.61, is amended to read as follows:

Section 330.61 A. In addition to the annual license fees, the Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-term Care Administrators may impose fees for:

1. Training programs conducted or approved by the Board; and
2. Education programs conducted or approved by the Board.

B. All revenues collected as a result of fees authorized in this section and imposed by the Board shall be deposited into the Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-term Care Administrators Revolving Fund.

SECTION 12. AMENDATORY 63 O.S. 2001, Section 330.62, is amended to read as follows:

Section 330.62 There is hereby created in the State Treasury a revolving fund for the Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-term Care Administrators to be designated the "Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-term Care Administrators Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of such sources of income as are provided by law. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-term Care Administrators to carry out the duties established by law. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 13. AMENDATORY 63 O.S. 2001, Section 1-853, is amended to read as follows:

Section 1-853. A. Except as provided in subsections B, C, D and E of this section, no certificate of need shall be issued by the State Department of Health unless, after investigation, the State Commissioner of Health makes the following findings:

1. The action proposed in the application for ~~such a~~ a certificate of need is necessary and desirable in order to provide the services required in the locality to be served;

2. The proposed action can be economically accomplished and maintained;

3. The proposed action will contribute to the orderly development of long-term care services in the locality;

4. The applicant is or employs a licensed ~~nursing home~~ long-term care administrator; and

5. The applicant is found to be in compliance with the provisions of subsection F of this section.

B. 1. An application for a certificate of need for a capital expenditure to eliminate or prevent imminent safety hazards as defined by federal, state or local fire, building or life safety codes or regulations, or to comply with state licensure standards, or to comply with accreditation standards, compliance with which is required to receive reimbursements under Title XVIII of the Social Security Act or payments under a state plan for medical assistance approved under Title XIX of such act, shall be approved unless the Department finds:

a. that the facility or service is not needed, or

b. that the applicant is found to be out of compliance with the provisions of subsection F of this section.

2. Approval ~~under~~ pursuant to this subsection shall cover only the capital expenditure to eliminate or prevent the hazards or to comply with standards described herein.

C. No certificate of need shall be issued for the acquisition of an existing facility unless, after investigation, the Commissioner finds that the applicant:

1. Has financial resources necessary to complete the transaction and to maintain services and staffing; and

2. Is found to be in compliance with the provisions of subsection F of this section.

D. 1. Any application seeking a certificate of need for the construction of a long-term care facility to replace or relocate all or part of the licensed bed capacity of an existing facility shall be granted a certificate of need if the application meets the following criteria:

a. the project involves no increase in licensed beds,

b. except for a not-for-profit life care community, the facility shall be constructed no farther than three (3) miles from the facility it is replacing or relocating, and

c. a plan for the use of the facility to be replaced or relocated is provided that ensures continuity of services.

2. The provisions of subsection F of this section shall not apply to replaced or relocated facilities.

E. Any application for a certificate of need for an increase in the number of licensed beds in an existing ~~nursing~~ long-term or specialized facility currently licensed under Section 1-1906 of this title shall be approved by the Commissioner if the application meets the following criteria:

1. The increase in any calendar year is no more than ten percent (10%) of the applicant's total licensed beds in each facility or the increase is no more than ten beds, whichever is greater;

2. The total capital cost of the project is less than Five Hundred Thousand Dollars (\$500,000.00);

3. The rate of occupancy of the beds in the existing facility is an average of ninety-three percent (93%) or more during the twelve (12) months preceding the filing of the application;

4. If the facility previously has not increased beds pursuant to this subsection. The provisions of this paragraph shall apply only to a facility that was constructed to replace or relocate part of the facility pursuant to subsection D of this section; and

5. The applicant is found to be in compliance with the provisions of subsection F of this section.

F. 1. The Commissioner shall refuse to issue a certificate of need to any applicant who has had, in ten percent (10%) or more of the applicant's long-term care facility holdings in the preceding sixty (60) months, a facility license or certification revoked, rescinded, canceled, terminated, involuntarily suspended, or refused renewal; or if the license or certification was relinquished voluntarily in lieu of penalty.

2. The Commissioner shall refuse to issue a certificate of need to any applicant except where the applicant overcomes a presumption against approval with clear and convincing evidence that one of the following circumstances was not due to the action or inaction of the applicant or any person with a controlling interest:

- a. the applicant has had, in any of the applicant's long-term care holdings in the preceding sixty (60) months, a facility's license or certificate revoked, rescinded, canceled, terminated, involuntarily suspended or refused renewal,
- b. the applicant has a history of noncompliance, as defined by rule, with the standards for licensure of long-term care facilities of any state in which the applicant has or has had long-term care facilities, or

with federal standards for certification of long-term care facilities,

- c. the applicant, in all current and prior ownership, operation and management of long-term care facilities, has not complied with all lawful orders of suspension, receivership, temporary management, or administrative penalty issued by the Department or by other authorities with similar responsibilities in other states or by the federal Health Care Financing Administration, or
- d. the applicant has been convicted of a felony criminal offense related to the operation or management of a long-term care facility.

3. The Commissioner may refuse to issue a certificate of need to any applicant who has had, in the preceding sixty (60) months, an administrative penalty above the level of a deficiency, other than any of those listed in paragraph 1 or 2 of this subsection, against any of the applicant's long-term care facility holdings or against any long-term care facility operated by a person with a controlling interest.

G. Noncompliance with a final agency order or final order or judgment of a court of record which has been set aside by a court on appeal of such final order or judgment shall not be considered a final order or judgment for the purposes of this section.

H. When the Commissioner makes a determination to issue or deny a certificate of need, the Commissioner shall provide written findings to the applicant, other reviewers and to other persons upon their request. The certificate of need shall establish the maximum capital expenditure for the project. The State Board of Health shall ~~adopt~~ promulgate rules concerning the time in which a decision must be made on an application.

I. Any person may request a reconsideration of the Commissioner's determination for good cause shown, the grounds for which shall be established by the Board by rule. A request for reconsideration shall be filed within ten (10) days of the Department determination. The hearing thereupon shall be conducted within thirty (30) days following the receipt of request. Written findings shall be issued within forty-five (45) days of such hearing.

J. The Commissioner shall refuse to issue a certificate of need for an increase in licensed bed capacity of any facility that was replaced or relocated in part pursuant to subsection D of this section unless all of that facility is subsequently replaced or relocated. The applicability of this subsection shall not be affected by any change in ownership, operation or management of the facility.

SECTION 14. AMENDATORY 63 O.S. 2001, Section 1-1904, as amended by Section 3, Chapter 230, O.S.L. 2002 (63 O.S. Supp. 2003, Section 1-1904), is amended to read as follows:

Section 1-1904. A. The State Department of Health shall establish a comprehensive system of licensure and certification for facilities in accordance with the Nursing Home Care Act for the purposes of:

1. Protecting the health, welfare and safety of residents;
2. Assuring the accountability for reimbursed care provided in certified facilities participating in a federal or state health program as provided by or through the Oklahoma Health Care Authority; and
3. Assuring consistent application of uniform inspection protocols.

B. The licensing and certification procedures and standards provided in ~~this act~~ the Nursing Home Care Act, or by rules ~~of~~ promulgated by the State Board of Health, shall be no less than

provided in statute and rules currently governing nursing facilities.

C. It shall be unlawful and upon conviction thereof, punishable as a misdemeanor for any person to operate, manage or open a facility unless such operation and management shall have been approved and regularly licensed as hereinafter provided.

D. Before an initial license shall be issued pursuant to the Nursing Home Care Act to operate and manage a facility, the applicant shall provide the following:

1. An application on a form provided by the Department containing, at a minimum, the following information:

- a. the name and address of the applicant, if an individual, and that the applicant is not less than twenty-one (21) years of age, of reputable and responsible character, and in sound physical and mental health; and if a firm, partnership, or association, of every member thereof; and in the case of a corporation, the name and address thereof and of its officers and its registered agent and like evidence for officers, as submitted for an individual,
- b. the name and location of the facility for which a license is sought,
- c. the name and address of the person or persons under whose management or supervision the facility will be conducted, and a copy of the written agreement between the manager and the applicant,
- d. the name and address of any other person holding an interest of at least five percent (5%) in the ownership, operation or management of the facility,
- e. the number and type of residents for which maintenance, personal care, specialized or nursing facility services are to be provided, and

f. a projected staffing pattern for providing patient care;

2. A statement from the unit of local government having zoning jurisdiction over the facility's location stating that the location of the facility is not in violation of a zoning ordinance; and

3. Documentation that the administrator is the holder of a current license as a ~~Nursing Home~~ Long-term Care Administrator issued by the Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-term Care Administrators.

E. Before issuing an initial license, the Department shall find that the individual applicant, or the corporation, partnership or other entity, if the applicant is not an individual, is a person responsible and suitable to operate or to direct or participate in the operation of a facility by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the Department and lack of revocation of a license during the previous five (5) years. In determining the applicant's responsibility and suitability to operate or to direct or participate in the operation of a facility, the Department may also consider the applicant's record of suspensions, receivership, administrative penalties, or noncompliance with lawful orders of this Department or of other departments of other states with similar responsibilities.

SECTION 15. AMENDATORY 63 O.S. 2001, Section 1-1950.1, is amended to read as follows:

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

1. "Nurses aide" ~~means~~ includes any person who provides, for compensation, nursing care or health-related services or supportive assistance to residents in:

a. a nursing facility, ~~or~~ or a specialized facility as such terms are defined by the Nursing Home Care Act,

- b. a residential care home as such term is defined by the Residential Care Act,
- c. an assisted living center as such term is defined by the Continuum of Care and Assisted Living Act,
- d. a continuum of care facility as such term is defined by the Continuum of Care and Assisted Living Act,
- e. a freestanding hospice or program providing hospice services as such terms are defined by the Hospice Licensing Act, or
- f. an adult day care center and who is not a licensed health professional as such term is defined by the Adult Day Care Act.

~~Such~~ The term "nurses aide" also ~~means~~ includes any person who provides ~~such~~ nursing care or health-related services or supportive assistance 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 of this section:

- a. a nursing facility, or specialized facility, ~~or~~ ~~residential care home~~ as such terms are defined in ~~Section 1-1902 of this title~~ by the Nursing Home Care Act,
- b. a residential care home as such term is defined by the Residential Care Act,
- c. an adult day care center as such term is defined in Section 1-872 of this title the Adult Day Care Act,
- d. an assisted living center as such term is defined by the Continuum of Care and Assisted Living Act,

- e. a continuum of care facility as such term is defined by the Continuum of Care and Assisted Living Act,
- f. a freestanding hospice or program providing hospice services as such terms are defined by the Hospice Licensing Act,
- e. g. a home health or home care agency as such term is defined by the Home Care Act, and
- ~~d.~~ h. 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; and

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 aide or other person to provide nursing care, health-related services or supportive assistance to any resident or other individual except as provided by paragraph 4 of this subsection, the employer shall provide for a criminal arrest check to be made on the nurses 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 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 on the person and shall provide to the Bureau any relevant information required by the Bureau to conduct the check. The employer shall pay a fee of Ten Dollars (\$10.00) 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. a ~~nursing home~~ long-term care administrator licensed pursuant to the provisions of ~~Section 330.53 of this title;~~ the Oklahoma Long-term Care Administrators Licensing Act,
- 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 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 aide or other person pending the results of the criminal arrest check on the nurses aide or other person. The employer in such instance shall provide to the Bureau the name and relevant information relating to the nurses aide or other person within seventy-two (72) hours after the date the nurses aide or other person accepts temporary employment. The employer shall not hire or contract with a nurses aide or other person on a permanent basis until the results of the criminal arrest check are received.

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

D. 1. The Bureau shall not provide to the employer the criminal arrest records of a nurses aide or other person being investigated pursuant to this section unless the criminal records relate to:

- a. any felony or misdemeanor classified as a crime against the nurses aide or other person~~†~~,

- b. any felony or misdemeanor classified as a crime against public decency or morality~~†~~1
- c. any felony or misdemeanor classified as domestic abuse pursuant to the provisions of the Protection from Domestic Abuse Act~~†~~1
- 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~~†~~1 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, the Bureau shall complete the criminal arrest check and report the results of the check 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 record before making an offer of permanent employment or contract to a nurses aide or other person described in subsection B of this section.

F. 1. If the results of a criminal arrest check reveal that the ~~subject~~ nurses aide or other person has been convicted of any of the following offenses, the employer shall not hire or contract with the nurses aide or other person:

- a. assault, battery, or assault and battery with a dangerous weapon~~†~~1
- b. aggravated assault and battery~~†~~1
- c. murder or attempted murder~~†~~1
- d. manslaughter, except involuntary manslaughter~~†~~1
- e. rape, incest or sodomy~~†~~1
- f. indecent exposure and indecent exhibition~~†~~1

- g. pandering~~+~~1
- h. child abuse~~+~~1
- i. abuse, neglect or financial exploitation of any person entrusted to his care or possession~~+~~1
- j. burglary in the first or second degree~~+~~1
- k. robbery in the first or second degree~~+~~1
- l. robbery or attempted robbery with a dangerous weapon, or imitation firearm~~+~~1
- m. arson in the first or second degree~~+~~1
- n. unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act~~+~~1
- o. grand larceny~~+~~1 or
- p. petit larceny or shoplifting within the past seven (7) years.

2. If the results of a criminal arrest check reveal that an employee or a nurses aide or other 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 nurses aide or other 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 any person addicted to ~~any~~ a 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 nurses aide or other 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 nurses aide or other person to whom such records relate.

I. 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.

J. As part of the inspections required by the Nursing Home Care Act, the Residential Care Act, the Continuum of Care and Assisted Living Act, the Hospice Licensing 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 16. REPEALER 63 O.S. 2001, Section 330.63, is hereby repealed.

SECTION 17. This act shall become effective July 1, 2004.

SECTION 18. 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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