

THE HOUSE OF REPRESENTATIVES
Monday, April 7, 2008

ENGROSSED

Senate Bill No. 1192

ENGROSSED SENATE BILL NO. 1192 - By: ADELSON AND JOHNSON
(CONSTANCE) of the Senate and SULLIVAN AND PITTMAN of the House.

An Act relating to poor persons; amending 56 O.S. 2001, Sections 1025.1, as last amended by Section 2, Chapter 38, O.S.L. 2005, 1025.2, as last amended by Section 3, Chapter 2, O.S.L. 2003, and 1025.3, as amended by Section 3, Chapter 378, O.S.L. 2002 (56 O.S. Supp. 2007, Sections 1025.1, 1025.2 and 1025.3), which relate to community services workers; modifying and adding definitions; modifying language; removing authority to charge certain fee; directing the Department of Human Services to follow certain screening procedures; authorizing certain persons to obtain specified records; modifying list of entities exempt from certain requirement; modifying certain time limit; and providing an effective date.

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

- 1 SECTION 1. AMENDATORY 56 O.S. 2001, Section 1025.1, as last amended by
2 Section 2, Chapter 38, O.S.L. 2005 (56 O.S. Supp. 2007, Section 1025.1), is amended to
3 read as follows:
- 4 Section 1025.1 For the purposes of this chapter:
- 5 1. "Bureau" means the Oklahoma State Bureau of Investigation;
 - 6 2. "Commission" means the Commission for Human Services;
 - 7 3. "Community services provider" means a community-based program, corporation,
8 or individual who contracts with, or is licensed or funded by, the Department of Human

1 Services to provide residential or vocational services to persons with mental retardation
2 or developmental disabilities, or contracts with the Oklahoma Health Care Authority to
3 provide services to individuals with mental retardation through ~~the a~~ Home and
4 Community-Based Waiver, except a private ICF/MR;

5 4. "Community services worker" means any person employed by or under contract
6 with a community services provider who provides, for compensation or as a volunteer,
7 health-related services, training, or supportive assistance to persons with developmental
8 disabilities, and who is not a licensed health professional or any person who contracts
9 with the Oklahoma Health Care Authority to provide specialized foster care, habilitation
10 training specialist services, or homemaker services to persons with developmental
11 disabilities;

12 5. "Department" means the Department of Human Services;

13 6. "Developmental disability" means a severe, chronic disability of a person which:
14 a. is attributable to a mental or physical impairment or combination of
15 mental and physical impairments, such as mental retardation, cerebral
16 palsy, or autism,
17 b. is manifested before the person attains twenty-two (22) years of age,
18 c. is likely to continue indefinitely,
19 d. results in substantial functional limitations in three or more of the
20 following areas of major life activity:
21 (1) self-care,
22 (2) receptive and expressive language,

- 1 (3) learning,
- 2 (4) mobility,
- 3 (5) self-direction,
- 4 (6) capacity for independent living, and
- 5 (7) economic self-sufficiency, and
- 6 e. reflects the person's need for a combination and sequence of special,
- 7 interdisciplinary, or generic care, treatment, or other services which
- 8 are of lifelong or extended duration and are individually planned and
- 9 coordinated;

10 7. "Health-related services" means those services provided by community services
11 providers or community services workers to persons with developmental disabilities that
12 include, but are not limited to, personal hygiene, transferring, range of motion,
13 supervision or assistance in activities of daily living, basic nursing care such as taking
14 temperature, pulse or respiration, positioning, incontinent care, and identification of
15 signs and symptoms of disease. Certain tasks that may be performed as basic nursing
16 care by community services workers require appropriate training provided or approved
17 by the Department, written agreement by the service recipient's personal support team,
18 and the primary care physician's acknowledgement and specific order related to the task.
19 Under such circumstances, basic nursing care may include, but need not be limited to:

- 20 a. nutrition, including meals by gastrostomy tube or jejeunostomy tube,
- 21 b. blood glucose monitoring,
- 22 c. ostomy bag care,

- 1 d. oral suctioning, and
- 2 e. administration of oral metered dose inhalers and nebulizers;

3 8. "Supportive assistance" means the service rendered to persons with
4 developmental disabilities which is sufficient to enable such person to meet an adequate
5 level of daily living. Supportive assistance includes, but is not limited to, training,
6 supervision, assistance in housekeeping, assistance in the preparation of meals, and
7 assistance in activities of daily living as necessary for the health and comfort of persons
8 with developmental disabilities;

9 9. "Maltreatment" means abuse, verbal abuse, sexual abuse, neglect, financial
10 neglect, exploitation or sexual exploitation of vulnerable adults as defined in Section 10-
11 103 of Title 43A of the Oklahoma Statutes or abuse, neglect, sexual abuse or sexual
12 exploitation of children as defined in Section 7102 of Title 10 of the Oklahoma Statutes;

13 10. "Personal care" means a level of assistance provided in the home of an
14 individual to meet the individual's activities of daily living needs such as bathing,
15 grooming, meal preparation, light housekeeping, laundry, and care plan-directed
16 errands;

17 ~~10.~~ 11. "Medicaid personal care services provider" means a program, corporation or
18 individual who provides services under the state Medicaid program personal care
19 program or Advantage Waiver to individuals who are elderly or who have a physical
20 disability; ~~and~~

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 ~~11.~~ 12. “Medicaid personal care assistant” means a person who provides Medicaid
2 services funded under the state Medicaid program personal care program, who is not a
3 certified nurse aide or a licensed professional;

4 13. “Specialized foster care” means the home- and community-based service as
5 defined in the 1915(c) waiver approved by the Centers for Medicare and Medicaid
6 Services;

7 14. “Habilitation training specialist services” means the home- and community-
8 based service as defined in the 1915 (c) waiver approved by the Centers for Medicare and
9 Medicaid Services;

10 15. “Homemaker services” means the home- and community-based service as
11 defined in the 1915(c) waiver approved by the Centers for Medicare and Medicaid
12 Services.

13 SECTION 2. AMENDATORY 56 O.S. 2001, Section 1025.2, as last amended by
14 Section 3, Chapter 2, O.S.L. 2003 (56 O.S. Supp. 2007, Section 1025.2), is amended to
15 read as follows:

16 Section 1025.2 A. 1. Except as otherwise provided by subsection C of this section,
17 before any community services provider or Medicaid personal care services provider
18 makes an offer to employ or to contract with a community services worker applicant or a
19 Medicaid personal care assistant applicant to provide health-related services, training, or
20 supportive assistance to a person with a developmental disability, or personal care
21 services to a person who receives the services of the state Medicaid ~~program~~ personal

1 care program, the community services provider or Medicaid personal care services
2 provider shall:

- 3 a. provide, prior to a check with the Department of Human Services, for a
4 criminal history records search to be made on the community services
5 worker applicant or Medicaid personal care assistant or contractor
6 pursuant to the provisions of this section, and
- 7 b. check with the Department of Human Services to determine if the
8 name of the applicant seeking employment or contract has been
9 entered on the community services worker registry created pursuant to
10 Section 1025.3 of this title. Prior to a decision by the Department to
11 enter the name of a community services worker or a Medicaid personal
12 care assistant on such registry, the Department shall allow for notice
13 and opportunity for due process for such community services worker or
14 Medicaid personal care assistant against whom a final investigative
15 finding by the Department of Human Services ~~or a finding by an~~
16 ~~Administrative Law Judge of abuse, neglect, or exploitation of~~
17 maltreatment of an individual has been made. ~~The Department of~~
18 ~~Human Services is authorized to charge a community services provider~~
19 ~~or a Medicaid personal care assistant a reasonable fee for access to the~~
20 ~~registry.~~ If the name of the applicant seeking employment or a
21 contract with the community services provider or Medicaid personal
22 care assistant is listed on the registry as having a final Department of

1 a contract with the provider and shall provide to the Bureau any relevant information
2 required by the Bureau to conduct the search. The community services provider shall
3 pay a reasonable fee to the Bureau for each criminal history records search that is
4 conducted pursuant to such a request. Such fee shall be determined by the Oklahoma
5 State Bureau of Investigation.

6 ~~6~~ 7. The requirement of a criminal history records search shall not apply to an
7 offer of employment made to:

- 8 a. any person who is the holder of a current license or certificate issued
9 pursuant to the laws of this state authorizing such person to practice
10 the healing arts,
- 11 b. a registered nurse or practical nurse licensed pursuant to the
12 Oklahoma Nursing Practice Act,
- 13 c. a physical therapist registered pursuant to the Physical Therapy
14 Practice Act,
- 15 d. a physical therapist assistant licensed pursuant to the Physical
16 Therapy Practice Act,
- 17 e. a social worker licensed pursuant to the provisions of the Social
18 Worker's Licensing Act,
- 19 f. a speech pathologist or audiologist licensed pursuant to the Speech
20 Pathology and Audiology Licensing Act,
- 21 g. a dietitian licensed pursuant to the provisions of the Licensed Dietitian
22 Act, ~~or~~

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

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

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

17 2. The community services provider may request, in writing, a waiver of the
18 provisions of paragraph 1 of this subsection from the Director of the Department of
19 Human Services, or a designee of the Director. The Director or a designee of the Director
20 may waive the provisions based upon standards promulgated by the Commission for
21 Human Services after concurrence by the Chief Executive Officer of the Oklahoma
22 Health Care Authority as the State Medicaid Agency. No waiver shall be granted for

1 offenses resulting in a felony conviction or plea of guilty or nolo contendere to a felony
2 that occurred less than five (5) calendar years prior to the date of request. In no case
3 shall a waiver be granted for employment of a community services worker who has been
4 convicted of, or pled guilty or nolo contendere to, a felony count of aggravated assault and
5 battery, homicide, murder, attempted murder, rape, incest, sodomy, or abuse, neglect, or
6 financial exploitation of any person entrusted to the worker's care.

7 G. All criminal history records received by the community services provider or
8 Medicaid personal care services provider are for the exclusive use of the Department of
9 Human Services, the Oklahoma Health Care Authority and the community services
10 provider or Medicaid personal care services provider ~~which~~ that requested the
11 information. Except as otherwise provided by this chapter or upon court order or with
12 the written consent of the person being investigated, the criminal history records shall
13 not be released or otherwise disclosed to any other person or agency.

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

16 I. As part of any inspections required by law, the Department of Human Services
17 shall review the employment files of the community services provider or Medicaid
18 personal care services provider required to conduct a criminal history records search to
19 ensure such provider is in compliance with the provisions of this section.

20 J. The Department of Human Services shall disclose all registry information, all
21 criminal records gathered and any inspections conducted as a result of this section to the

1 ~~State Medicaid Agency~~ Oklahoma Health Care Authority upon the request of the ~~State~~
2 ~~Medicaid Agency~~ Oklahoma Health Care Authority.

3 SECTION 3. AMENDATORY 56 O.S. 2001, Section 1025.3, as amended by
4 Section 3, Chapter 378, O.S.L. 2002 (56 O.S. Supp. 2007, Section 1025.3), is amended to
5 read as follows:

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

9 1. A procedure for notation in such registry of a final Department of Human
10 Services investigative finding or a finding by an Administrative Law Judge of ~~abuse,~~
11 ~~neglect, verbal abuse, or exploitation as these terms are defined in Section 10-103 of Title~~
12 ~~43A of the Oklahoma Statutes,~~ maltreatment of an individual by a community services
13 worker or a Medicaid personal care assistant;

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

19 3. Disclosure requirements for information in the registry; and

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

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

4 1. The individual's full name;

5 2. Information necessary to identify each individual;

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

7 4. Information on any final Department of Human Services investigative finding or
8 Administrative Law Judge finding of ~~abuse, neglect, verbal abuse or exploitation as these~~
9 ~~terms are defined in Section 10-103 of Title 43A of the Oklahoma Statutes~~ maltreatment
10 concerning the worker.

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

19 SECTION 4. This act shall become effective November 1, 2008.

20 COMMITTEE REPORT BY: COMMITTEE ON HUMAN SERVICES, dated 04-03-08 -
21 DO PASS, As Coauthored.