

3 Senate Bill No. 1192

4 SENATE BILL NO. 1192 - By: ADELSON and JOHNSON (Constance) of the
5 Senate and SULLIVAN of the House.

6 An Act relating to poor persons; amending 56 O.S. 2001,
7 Sections 1025.1, as last amended by Section 2, Chapter 38,
8 O.S.L. 2005, 1025.2, as last amended by Section 3, Chapter
9 2, O.S.L. 2003, and 1025.3, as amended by Section 3, Chapter
10 378, O.S.L. 2002 (56 O.S. Supp. 2007, Sections 1025.1,
11 1025.2 and 1025.3), which relate to community services
12 workers; modifying and adding definitions; modifying
13 language; removing authority to charge certain fee;
14 directing the Department of Human Services to follow certain
15 screening procedures; authorizing certain persons to obtain
16 specified records; modifying list of entities exempt from
17 certain requirement; modifying certain time limit; and
18 providing an effective date.

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

20 SECTION 1. AMENDATORY 56 O.S. 2001, Section 1025.1, as
21 last amended by Section 2, Chapter 38, O.S.L. 2005 (56 O.S. Supp.
22 2007, Section 1025.1), is amended to read as follows:

23 Section 1025.1 For the purposes of this chapter:

- 24 1. "Bureau" means the Oklahoma State Bureau of Investigation;
25 2. "Commission" means the Commission for Human Services;
26 3. "Community services provider" means a community-based
27 program, corporation, or individual who contracts with, or is
28 licensed or funded by, the Department of Human Services to provide
29 residential or vocational services to persons with mental
30 retardation or developmental disabilities, or contracts with the

1 Oklahoma Health Care Authority to provide services to individuals
2 with mental retardation through ~~the~~ a Home and Community-Based
3 Waiver, except a private ICF/MR;

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

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

13 6. "Developmental disability" means a severe, chronic
14 disability of a person which:

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

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

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

1 task. Under such circumstances, basic nursing care may include, but
2 need not be limited to:

- 3 a. nutrition, including meals by gastrostomy tube or
- 4 jejeunostomy tube,
- 5 b. blood glucose monitoring,
- 6 c. ostomy bag care,
- 7 d. oral suctioning, and
- 8 e. administration of oral metered dose inhalers and
- 9 nebulizers;

10 8. "Supportive assistance" means the service rendered to
11 persons with developmental disabilities which is sufficient to
12 enable such person to meet an adequate level of daily living.
13 Supportive assistance includes, but is not limited to, training,
14 supervision, assistance in housekeeping, assistance in the
15 preparation of meals, and assistance in activities of daily living
16 as necessary for the health and comfort of persons with
17 developmental disabilities;

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

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

5 ~~10.~~ 11. "Medicaid personal care services provider" means a
6 program, corporation or individual who provides services under the
7 state Medicaid program personal care program or Advantage Waiver to
8 individuals who are elderly or who have a physical disability; ~~and~~

9 ~~11.~~ 12. "Medicaid personal care assistant" means a person who
10 provides Medicaid services funded under the state Medicaid program
11 personal care program, who is not a certified nurse aide or a
12 licensed professional;

13 13. "Specialized foster care" means the home- and community-
14 based service as defined in the 1915(c) waiver approved by the
15 Centers for Medicare and Medicaid Services;

16 14. "Habilitation training specialist services" means the home-
17 and community-based service as defined in the 1915 (c) waiver
18 approved by the Centers for Medicare and Medicaid Services;

19 15. "Homemaker services" means the home- and community-based
20 service as defined in the 1915(c) waiver approved by the Centers for
21 Medicare and Medicaid Services.

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

4 Section 1025.2 A. 1. Except as otherwise provided by
5 subsection C of this section, before any community services provider
6 or Medicaid personal care services provider makes an offer to employ
7 or to contract with a community services worker applicant or a
8 Medicaid personal care assistant applicant to provide health-related
9 services, training, or supportive assistance to a person with a
10 developmental disability, or personal care services to a person who
11 receives the services of the state Medicaid ~~program~~ personal care
12 program, the community services provider or Medicaid personal care
13 services provider shall:

- 14 a. provide, prior to a check with the Department of Human
15 Services, for a criminal history records search to be
16 made on the community services worker applicant or
17 Medicaid personal care assistant or contractor
18 pursuant to the provisions of this section, and
19 b. check with the Department of Human Services to
20 determine if the name of the applicant seeking
21 employment or contract has been entered on the
22 community services worker registry created pursuant to
23 Section 1025.3 of this title. Prior to a decision by

1 the Department to enter the name of a community
2 services worker or a Medicaid personal care assistant
3 on such registry, the Department shall allow for
4 notice and opportunity for due process for such
5 community services worker or Medicaid personal care
6 assistant against whom a final investigative finding
7 by the Department of Human Services ~~or a finding by an~~
8 ~~Administrative Law Judge of abuse, neglect, or~~
9 ~~exploitation~~ of maltreatment of an individual has been
10 made. ~~The Department of Human Services is authorized~~
11 ~~to charge a community services provider or a Medicaid~~
12 ~~personal care assistant a reasonable fee for access to~~
13 ~~the registry.~~ If the name of the applicant seeking
14 employment or a contract with the community services
15 provider or Medicaid personal care assistant is listed
16 on the registry as having a ~~final Department of Human~~
17 ~~Services investigative finding~~ or a finding by an
18 Administrative Law Judge pursuant to the requirements
19 of Section 1025.3 of this title, and the Department
20 has allowed for notice and opportunity for due process
21 for such applicant, the provider shall not hire the
22 applicant.

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

5 3. ~~A community~~ If the Oklahoma Health Care Authority contracts
6 directly with a specialized foster care provider or habilitation
7 training specialist services provider or a homemaker services
8 provider, the Department shall follow the screening procedures
9 required by this section for community services providers.

10 4. Community services provider is providers and Medicaid
11 personal care services providers are authorized to obtain records of
12 any criminal conviction, guilty plea, or plea of nolo contendere
13 maintained by the Oklahoma State Bureau of Investigation which the
14 employer is required or authorized to request pursuant to the
15 provisions of this section.

16 ~~4-~~ 5. A Medicaid personal care services provider shall request
17 the Bureau to conduct a criminal ~~background check~~ history records
18 search on Medicaid personal care assistants pursuant to the
19 provisions of Section 1-1950.1 of Title 63 of the Oklahoma Statutes.

20 ~~5-~~ 6. The community services provider shall request the Bureau
21 to conduct a criminal history records search on a community services
22 worker desiring employment or a contract with the provider and shall
23 provide to the Bureau any relevant information required by the

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

5 ~~6-~~ 7. The requirement of a criminal history records search
6 shall not apply to an offer of employment made to:

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

1 i. a respiratory care practitioner licensed pursuant to
2 the Respiratory Care Practice Act.

3 B. At the request of the community services provider, the
4 Bureau shall conduct a criminal history records search on any
5 applicant desiring employment or a contract pursuant to subsection A
6 of this section or any worker employed by the community services
7 provider, including any of the workers specified in paragraph 6 of
8 subsection A of this section, at any time during the period of
9 employment of such worker with the provider.

10 C. A community services provider may make an offer of temporary
11 employment to a community services worker pending the results of
12 such criminal history records search and the registry review on the
13 applicant. The community services provider in such instance shall
14 provide to the Bureau the name and relevant information relating to
15 the applicant within seventy-two (72) hours after the date the
16 applicant accepts temporary employment. Temporary employment shall
17 not extend longer than the time necessary to receive the results of
18 the criminal history records search and registry review, not to
19 exceed thirty (30) days. The community services provider shall not
20 hire or contract with an applicant as a community services worker on
21 a permanent basis until the results of the criminal history records
22 search and the registry review are received.

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

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

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

21 2. The community services provider may request, in writing, a
22 waiver of the provisions of paragraph 1 of this subsection from the
23 Director of the Department of Human Services, or a designee of the

1 Director. The Director or a designee of the Director may waive the
2 provisions based upon standards promulgated by the Commission for
3 Human Services after concurrence by the Chief Executive Officer of
4 the Oklahoma Health Care Authority as the State Medicaid Agency. No
5 waiver shall be granted for offenses resulting in a felony
6 conviction or plea of guilty or nolo contendere to a felony that
7 occurred less than five (5) calendar years prior to the date of
8 request. In no case shall a waiver be granted for employment of a
9 community services worker who has been convicted of, or pled guilty
10 or nolo contendere to, a felony count of aggravated assault and
11 battery, homicide, murder, attempted murder, rape, incest, sodomy,
12 or abuse, neglect, or financial exploitation of any person entrusted
13 to the worker's care.

14 G. All criminal history records received by the community
15 services provider or Medicaid personal care services provider are
16 for the exclusive use of the Department of Human Services, the
17 Oklahoma Health Care Authority and the community services provider
18 or Medicaid personal care services provider ~~which~~ that requested the
19 information. Except as otherwise provided by this chapter or upon
20 court order or with the written consent of the person being
21 investigated, the criminal history records shall not be released or
22 otherwise disclosed to any other person or agency.

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

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

9 J. The Department of Human Services shall disclose all registry
10 information, all criminal records gathered and any inspections
11 conducted as a result of this section to the ~~State Medicaid Agency~~
12 Oklahoma Health Care Authority upon the request of the ~~State~~
13 ~~Medicaid Agency~~ Oklahoma Health Care Authority.

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

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

21 1. A procedure for notation in such registry of a final
22 Department of Human Services investigative finding or a finding by
23 an Administrative Law Judge of ~~abuse, neglect, verbal abuse, or~~

1 ~~exploitation as these terms are defined in Section 10-103 of Title~~
2 ~~43A of the Oklahoma Statutes,~~ maltreatment of an individual by a

3 community services worker or a Medicaid personal care assistant;

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

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

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

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

17 1. The individual's full name;

18 2. Information necessary to identify each individual;

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

20 and

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

1 ~~Section 10-103 of Title 43A of the Oklahoma Statutes~~ maltreatment
2 concerning the worker.

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

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

15 COMMITTEE REPORT BY: COMMITTEE ON HEALTH & HUMAN RESOURCES, dated
16 2-14-08 - DO PASS, As Coauthored.