

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 SENATE BILL 1192

By: Adelson

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5  
6 AS INTRODUCED

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

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

22 SECTION 1. AMENDATORY 56 O.S. 2001, Section 1025.1, as  
23 last amended by Section 2, Chapter 38, O.S.L. 2005 (56 O.S. Supp.  
24 2007, Section 1025.1), is amended to read as follows:

Section 1025.1 For the purposes of this chapter:

1. "Bureau" means the Oklahoma State Bureau of Investigation;
2. "Commission" means the Commission for Human Services;

1       3. "Community services provider" means a community-based  
2 program, corporation, or individual who contracts with, or is  
3 licensed or funded by, the Department of Human Services to provide  
4 residential or vocational services to persons with mental  
5 retardation or developmental disabilities, or contracts with the  
6 Oklahoma Health Care Authority to provide services to individuals  
7 with mental retardation through ~~the~~ a Home and Community-Based  
8 Waiver, except a private ICF/MR;

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

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

18       6. "Developmental disability" means a severe, chronic  
19 disability of a person which:

- 20           a. is attributable to a mental or physical impairment or  
21 combination of mental and physical impairments, such  
22 as mental retardation, cerebral palsy, or autism,  
23           b. is manifested before the person attains twenty-two  
24 (22) years of age,

- 1 c. is likely to continue indefinitely,
- 2 d. results in substantial functional limitations in three
- 3 or more of the following areas of major life activity:
- 4 (1) self-care,
- 5 (2) receptive and expressive language,
- 6 (3) learning,
- 7 (4) mobility,
- 8 (5) self-direction,
- 9 (6) capacity for independent living, and
- 10 (7) economic self-sufficiency, and
- 11 e. reflects the person's need for a combination and
- 12 sequence of special, interdisciplinary, or generic
- 13 care, treatment, or other services which are of
- 14 lifelong or extended duration and are individually
- 15 planned and coordinated;

16 7. "Health-related services" means those services provided by

17 community services providers or community services workers to

18 persons with developmental disabilities that include, but are not

19 limited to, personal hygiene, transferring, range of motion,

20 supervision or assistance in activities of daily living, basic

21 nursing care such as taking temperature, pulse or respiration,

22 positioning, incontinent care, and identification of signs and

23 symptoms of disease. Certain tasks that may be performed as basic

24 nursing care by community services workers require appropriate

1 training provided or approved by the Department, written agreement  
2 by the service recipient's personal support team, and the primary  
3 care physician's acknowledgement and specific order related to the  
4 task. Under such circumstances, basic nursing care may include, but  
5 need not be limited to:

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

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

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

1 exploitation of children as defined in Section 7102 of Title 10 of  
2 the Oklahoma Statutes;

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

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

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

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

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

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

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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  
24 the Department to enter the name of a community

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

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

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

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

14 ~~4.~~ 5. A Medicaid personal care services provider shall request  
15 the Bureau to conduct a criminal ~~background check~~ history records  
16 search on Medicaid personal care assistants pursuant to the  
17 provisions of Section 1-1950.1 of Title 63 of the Oklahoma Statutes.

18 ~~5.~~ 6. The community services provider shall request the Bureau  
19 to conduct a criminal history records search on a community services  
20 worker desiring employment or a contract with the provider and shall  
21 provide to the Bureau any relevant information required by the  
22 Bureau to conduct the search. The community services provider shall  
23 pay a reasonable fee to the Bureau for each criminal history records  
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1 search that is conducted pursuant to such a request. Such fee shall  
2 be determined by the Oklahoma State Bureau of Investigation.

3 ~~6.~~ 7. The requirement of a criminal history records search  
4 shall not apply to an offer of employment made to:

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

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

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

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

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

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

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

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

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

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

21 I. As part of any inspections required by law, the Department  
22 of Human Services shall review the employment files of the community  
23 services provider or Medicaid personal care services provider  
24

1 required to conduct a criminal history records search to ensure such  
2 provider is in compliance with the provisions of this section.

3 J. The Department of Human Services shall disclose all registry  
4 information, all criminal records gathered and any inspections  
5 conducted as a result of this section to the ~~State Medicaid Agency~~  
6 Oklahoma Health Care Authority upon the request of the State  
7 ~~Medicaid Agency~~ Oklahoma Health Care Authority.

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

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

15 1. A procedure for notation in such registry of a final  
16 Department of Human Services investigative finding or a finding by  
17 an Administrative Law Judge of ~~abuse, neglect, verbal abuse, or~~  
18 ~~exploitation as these terms are defined in Section 10-103 of Title~~  
19 ~~43A of the Oklahoma Statutes,~~ maltreatment of an individual by a  
20 community services worker or a Medicaid personal care assistant;

21 2. A procedure for notice and due process for a community  
22 services worker, or a Medicaid personal care assistant, or applicant  
23 before the entering of such person's name in the registry as having  
24 a final Department of Human Services investigative finding or

1 Administrative Law Judge finding of ~~abuse, neglect, verbal abuse, or~~  
2 ~~exploitation~~ maltreatment of an individual;

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

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

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

10 1. The individual's full name;

11 2. Information necessary to identify each individual;

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

13 and

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

19 C. A community services worker, a Medicaid personal care  
20 assistant, or applicant who is adversely affected by an  
21 Administrative Law Judge finding of ~~abuse, neglect, verbal abuse or~~  
22 ~~exploitation~~ maltreatment of an individual may seek judicial review  
23 pursuant to Article II of the Administrative Procedures Act. The  
24 finding of the Administrative Law Judge may be appealed to the

1 district court of the county in which the community services worker,  
2 Medicaid personal care assistant, or applicant resides within thirty  
3 (30) days of the date of the decision. A copy of the petition shall  
4 be served by mail upon the general counsel of the Department of  
5 Human Services.

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

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