

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 SENATE BILL 486

By: Lamb

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5  
6 AS INTRODUCED

7 An Act relating to public health and safety; amending  
8 63 O.S. 2001, Sections 1-1950.1, as last amended by  
9 Section 12, Chapter 436, O.S.L. 2004 and 1-1950.3, as  
10 last amended by Section 2, Chapter 79, O.S.L. 2006  
11 (63 O.S. Supp. 2006, Sections 1-1950.1 and 1-1950.3),  
12 which relate to nurses aides; modifying condition  
13 prohibiting certain hire or contract; deleting  
14 obsolete language; repealing 63 O.S. 2001, Section 1-  
15 1950.4, as amended by Section 5, Chapter 339, O.S.L.  
2003 and Section 1, Chapter 344, O.S.L. 2003 (63 O.S.  
16 Supp. 2006, Sections 1-1950.4 and 1-1950.4a), which  
17 relate to employment application for nurses aides;  
18 and providing an effective date.

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

20 SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1950.1, as  
21 last amended by Section 12, Chapter 436, O.S.L. 2004 (63 O.S. Supp.  
22 2006, Section 1-1950.1), is amended to read as follows:

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

24 1. "Nurse aide" means any person who provides, for  
compensation, nursing care or health-related services to residents  
in a nursing facility, a specialized facility, a residential care  
home, continuum of care facility, assisted living center or an adult

1 day care center and who is not a licensed health professional. Such  
2 term also means any person who provides such services to individuals  
3 in their own homes as an employee or contract provider of a home  
4 health or home care agency, or as a contract provider of the  
5 Medicaid State Plan Personal Care Program;

6 2. "Employer" means any of the following facilities, homes,  
7 agencies or programs which are subject to the provision of this  
8 section:

- 9 a. a nursing facility or specialized facility as such  
10 terms are defined in the Nursing Home Care Act,
- 11 b. a residential care home as such term is defined by the  
12 Residential Care Act,
- 13 c. an adult day care center as such term is defined in  
14 the Adult Day Care Act,
- 15 d. an assisted living center as such term is defined by  
16 the Continuum of Care and Assisted Living Act,
- 17 e. a continuum of care facility as such term is defined  
18 by the Continuum of Care and Assisted Living Act,
- 19 f. a home health or home care agency, and
- 20 g. the Department of Human Services, in its capacity as  
21 an operator of any hospital or health care institution  
22 or as a contractor with providers under the Medicaid  
23 State Plan Personal Care Program;

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1           3. "Home health or home care agency" means any person,  
2 partnership, association, corporation or other organization which  
3 administers, offers or provides health care services or supportive  
4 assistance for compensation to three or more ill, disabled, or  
5 infirm persons in the temporary or permanent residence of such  
6 persons, and includes any subunits or branch offices of a parent  
7 home health or home care agency; and

8           4. "Bureau" means the Oklahoma State Bureau of Investigation.

9           B. 1. Except as otherwise provided by subsection C of this  
10 section, before any employer makes an offer to employ or to contract  
11 with a nurse aide or other person to provide nursing care, health-  
12 related services or supportive assistance to any individual except  
13 as provided by paragraph 4 of this subsection, the employer shall  
14 provide for a criminal history background check to be made on the  
15 nurse aide or other person pursuant to the provisions of this  
16 section. If the employer is a facility, home or institution which  
17 is part of a larger complex of buildings, the requirement of a  
18 criminal history background check shall apply only to an offer of  
19 employment or contract made to a person who will work primarily in  
20 the immediate boundaries of the facility, home or institution.

21           2. Except as otherwise specified by subsection D of this  
22 section, an employer is authorized to obtain any criminal history  
23 background records maintained by the Oklahoma State Bureau of  
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1 Investigation which the employer is required or authorized to  
2 request by the provisions of this section.

3 3. The employer shall request the Bureau to conduct a criminal  
4 history background check on the person and shall provide to the  
5 Bureau any relevant information required by the Bureau to conduct  
6 the check. The employer shall pay a fee of Fifteen Dollars (\$15.00)  
7 to the Bureau for each criminal history background check that is  
8 conducted pursuant to such a request.

9 4. The requirement of a criminal history background check shall  
10 not apply to an offer of employment made to:

- 11 a. a nursing home administrator licensed pursuant to the  
12 provisions of Section 330.53 of this title,
- 13 b. any person who is the holder of a current license or  
14 certificate issued pursuant to the laws of this state  
15 authorizing such person to practice the healing arts,
- 16 c. a registered nurse or practical nurse licensed  
17 pursuant to the Oklahoma Nursing Practice Act,
- 18 d. a physical therapist registered pursuant to the  
19 Physical Therapy Practice Act,
- 20 e. a physical therapist assistant licensed pursuant to  
21 the Physical Therapy Practice Act,
- 22 f. a social worker licensed pursuant to the provisions of  
23 the Social Worker's Licensing Act,

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- 1           g. a speech pathologist or audiologist licensed pursuant
- 2           to the Speech-Language Pathology and Audiology
- 3           Licensing Act,
- 4           h. a dietitian licensed pursuant to the provisions of the
- 5           Licensed Dietitian Act,
- 6           i. an occupational therapist licensed pursuant to the
- 7           Occupational Therapy Practice Act, or
- 8           j. an individual who is to be employed by a nursing
- 9           service conducted by and for the adherents of any
- 10          religious denomination, the tenets of which include
- 11          reliance on spiritual means through prayer alone for
- 12          healing.

13           5. At the request of an employer, the Bureau shall conduct a  
14 criminal history background check on any person employed by the  
15 employer, including the persons specified in paragraph 4 of this  
16 subsection at any time during the period of employment of such  
17 person.

18           C. 1. An employer may make an offer of temporary employment to  
19 a nurse aide or other person pending the results of the criminal  
20 history background check on the person. The employer in such  
21 instance shall provide to the Bureau the name and relevant  
22 information relating to the person within seventy-two (72) hours  
23 after the date the person accepts temporary employment. The  
24 employer shall not hire or contract with a person on a permanent

1 basis until the results of the criminal history background check are  
2 received.

3 2. An employer may accept a criminal history background report  
4 less than one (1) year old of a person to whom such employer makes  
5 an offer of employment or employment contract. The report shall be  
6 obtained from the previous employer or contractor of such person and  
7 shall only be obtained upon the written consent of such person.

8 D. 1. The Bureau shall not provide to the employer the  
9 criminal history background records of a person being investigated  
10 pursuant to this section unless the criminal records relate to:

- 11 a. any felony or misdemeanor classified as a crime  
12 against the person,
- 13 b. any felony or misdemeanor classified as a crime  
14 against public decency or morality,
- 15 c. any felony or misdemeanor classified as domestic abuse  
16 pursuant to the provisions of the Protection from  
17 Domestic Abuse Act,
- 18 d. a felony violation of any state statute intended to  
19 control the possession or distribution of a Schedule I  
20 through V drug pursuant to the Uniform Controlled  
21 Dangerous Substances Act, and
- 22 e. any felony or misdemeanor classified as a crime  
23 against property.

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1           2. Within five (5) days of receiving a request to conduct a  
2 criminal history background check, the Bureau shall complete the  
3 criminal history background check and report the results of the  
4 check to the requesting employer.

5           E. Every employer who is subject to the provisions of this  
6 section shall inform each applicant for employment, or each  
7 prospective contract provider, as applicable, that the employer is  
8 required to obtain a criminal history background record before  
9 making an offer of permanent employment or contract to a nurse aide  
10 or other person described in subsection B of this section.

11           F. 1. If the results of a criminal history background check  
12 reveal that the subject person has been convicted of any of the  
13 following offenses, the employer shall not hire or contract with the  
14 person:

- 15           a. assault, battery, or assault and battery with a  
16                 dangerous weapon,
- 17           b. aggravated assault and battery,
- 18           c. murder or attempted murder,
- 19           d. manslaughter, except involuntary manslaughter,
- 20           e. rape, incest or sodomy,
- 21           f. indecent exposure and indecent exhibition,
- 22           g. pandering,
- 23           h. child abuse,

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

2. If the results of a criminal history background check reveal that an employee or a 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 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

1 has been continuously employed by the employer prior to January 1,  
2 1992.

3 G. An employer shall not employ or continue employing a person  
4 addicted to any Schedule I through V drug as specified by the  
5 Uniform Controlled Dangerous Substances Act unless the person  
6 produces evidence that the person has successfully completed a drug  
7 rehabilitation program.

8 H. All criminal records received by the employer are  
9 confidential and are for the exclusive use of the State Department  
10 of Health and the employer which requested the information. Except  
11 on court order or with the written consent of the person being  
12 investigated, the records shall not be released or otherwise  
13 disclosed to any other person or agency. These records shall be  
14 destroyed after one (1) year from the end of employment of the  
15 person to whom such records relate.

16 I. Any person releasing or disclosing any information received  
17 pursuant to this section without the authorization prescribed by  
18 this section shall be guilty of a misdemeanor.

19 J. As part of the inspections required by the Nursing Home Care  
20 Act, Continuum of Care and Assisted Living Act, the Residential Care  
21 Act, and the Adult Day Care Act, the State Department of Health  
22 shall review the employment files of any facility, home or  
23 institution required to obtain criminal history background records  
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1 to ensure such facilities, homes or institutions are in compliance  
2 with the provisions of this section.

3 SECTION 2. AMENDATORY 63 O.S. 2001, Section 1-1950.3, as  
4 last amended by Section 2, Chapter 79, O.S.L. 2006 (63 O.S. Supp.  
5 2006, Section 1-1950.3), is amended to read as follows:

6 Section 1-1950.3 A. 1. Until November 1, 2004, no employer or  
7 contractor who is subject to the provisions of Section 1-1950.1 or  
8 1-1950.2 of this title shall use, on a full-time, temporary, per  
9 diem, or other basis, any individual who is not a licensed health  
10 professional as a nurse aide for more than four (4) months, unless  
11 such individual has satisfied all requirements for certification and  
12 is eligible for placement on the nurse aide registry maintained by  
13 the State Department of Health.

14 2. a. Effective November 1, 2004, no nursing facility,  
15 specialized facility, continuum of care facility,  
16 assisted living center, adult day care or residential  
17 home shall employ as a nurse aide, on a full-time,  
18 temporary, per diem, or any other basis, any  
19 individual who is not certified as a nurse aide in  
20 good standing and is not eligible for placement on the  
21 nurse aide registry maintained by the State Department  
22 of Health.

23 b. The Department may grant a temporary emergency waiver  
24 to the provisions of this paragraph to any nursing

1 facility, continuum of care facility, assisted living  
2 center or adult day care or residential home which can  
3 demonstrate that such facility, home or institution  
4 has been unable to successfully meet its staffing  
5 requirements related to the provisions of subparagraph  
6 a of this paragraph. No later than September 30,  
7 2004, the State Board of Health shall promulgate rules  
8 related to eligibility for receipt of such waiver, and  
9 the process and the conditions for obtaining the  
10 waiver.

11 ~~c. From November 1, 2004, until October 31, 2005, the~~  
12 ~~Department shall not issue any monetary penalties nor~~  
13 ~~shall it issue any licensure deficiency related to the~~  
14 ~~provisions of subparagraph a of this paragraph to a~~  
15 ~~nursing facility, specialized facility, continuum of~~  
16 ~~care facility, assisted living center, adult day care~~  
17 ~~or residential care home, which is unable to comply~~  
18 ~~with the requirements and which has applied for a~~  
19 ~~temporary waiver under subparagraph b of this~~  
20 ~~paragraph, whether or not the waiver application has~~  
21 ~~been approved.~~

22 B. 1. Until November 1, 2004, no person shall use an  
23 individual as a nurse aide unless the individual:  
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- a. is enrolled in a Department-approved training and competency evaluation program,
- b. is currently certified and eligible to be listed on the nurse aide registry, or
- c. has completed the requirements for certification and placement on the nurse aide registry.

2. An individual employed as a nurse aide who is enrolled in a Department-approved training and competency evaluation program for nurse aides shall successfully complete such training and competency evaluations within four (4) months of entering the training program.

3. The individual shall obtain certification, and the Department shall place the nurse aide on the registry within thirty (30) days after demonstration of competency.

4. Any nursing facility, specialized facility, continuum of care facility, assisted living center, adult day care or residential care home that employs an individual who is in nurse aide training, as provided in this section, shall ensure that the trainee shall:

- a. complete the required training and competency program as provided in rules prior to any direct contact with a resident or client,
- b. not perform any service for which the trainee has not trained and been determined proficient by the instructor, and

1 c. be supervised at all times by no less than a licensed  
2 practical nurse.

3 5. No employer may use as a nurse aide an individual who has  
4 not completed the nurse aide training and competency program within  
5 the required four-month period.

6 C. For purposes of this section, "four (4) months" means the  
7 equivalent of four (4) months of full-time employment as a nurse  
8 aide by any employer in any nursing facility, specialized facility,  
9 continuum of care facility, assisted living center, adult day care  
10 or residential care home.

11 D. 1. The Department may grant a trainee a one-time extension  
12 of the four-month training requirement if:

- 13 a. such requirement causes an undue hardship for the  
14 trainee due to unusual circumstances or illness, and
- 15 b. the trainee has demonstrated a good faith effort to  
16 complete the training and competency evaluation  
17 program.

18 2. The State Board of Health shall promulgate rules related to  
19 the review of and the process and conditions for such an extension.

20 E. 1. Certified medication aides, upon successful completion  
21 of competency standards or prescribed training courses, shall be  
22 eligible to distribute medications or treatments provided by  
23 paragraph 2 of this subsection within a correctional facility, as  
24 set forth in Section 623 of Title 57 of the Oklahoma Statutes, as

1 well as any correctional facility operated by a contractor of the  
2 Department of Corrections, nursing facility, specialized facility,  
3 continuum of care facility, assisted living center, adult day care  
4 or residential care home.

5 2. Certified medication aides may:

6 a. perform fingerstick blood sugars,

7 b. administer diabetic medications, including

8 subcutaneous injections of insulin, provided that the

9 certified medication aide has completed a Department-

10 approved advanced training program on diabetes and the

11 administration of diabetes medications, including

12 injections,

13 c. administer medications, first aid treatments and

14 nutrition; by oral, rectal, vaginal, otic, ophthalmic,

15 nasal, skin, topical, transdermal, and

16 nasogastric/gastrostomy tubes routes, and

17 d. administer oral metered dose inhalers and nebulizers;

18 3. The State Board of Health shall establish rules necessary to

19 ensure the safety of medication administration by certified

20 medication aides, including but not limited to:

21 a. competency and practice standards for medication

22 aides,

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- b. maintaining a list of skills and functions that medication aides will be able to perform upon completion of certification course work,
- c. certification and recertification requirements for medication aides,
- d. development of criteria and procedures for approval or disapproval of training and competency evaluation programs, and
- e. procedures for denying, suspending, withdrawing, or refusing to renew certification for a medication aide;

4. Each facility shall develop policies and procedures that comply with the provisions of this subsection and rules promulgated by the State Board of Health. This policy shall be reviewed and approved by the facility Medical Director, Director of Nurses and/or Registered Nurse Consultant.

F. Any person convicted of violating any of the provisions of this section or Section 1-1950.1 of this title shall be guilty of a misdemeanor, punishable by a fine of not less than One Hundred Dollars (\$100.00) nor more than Three Hundred Dollars (\$300.00), imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

SECTION 3. REPEALER 63 O.S. 2001, Section 1-1950.4, as amended by Section 5, Chapter 339, O.S.L. 2003 (63 O.S. Supp. 2006, Section 1-1950.4), is hereby repealed.

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SECTION 4. REPEALER Section 1, Chapter 344, O.S.L. 2003  
(63 O.S. Supp. 2006, Section 1-1950.4a), is hereby repealed.

SECTION 5. This act shall become effective November 1, 2007.

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