

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL 841

By: Branam of the Senate

and

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7
8 COMMITTEE SUBSTITUTE

9 [public health - criminal history background checks -
10 certain fees - effective date]

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

14 SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1950.1, as
15 last amended by Section 12, Chapter 436, O.S.L. 2004 (63 O.S. Supp.
16 2008, Section 1-1950.1), is amended to read as follows:

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

18 1. "Nurse aide" means any person who provides, for compensation,
19 nursing care or health-related services to residents in a nursing
20 facility, a specialized facility, a residential care home, continuum
21 of care facility, assisted living center or an adult day care center
22 and who is not a licensed health professional. Such term also means
23 any person who provides such services to individuals in their own
24 homes as an employee or contract provider of a home health or home

1 care agency, or as a contract provider of the Medicaid State Plan
2 Personal Care Program;

3 2. "Employer" means any of the following facilities, homes,
4 agencies or programs which are subject to the provision of this
5 section:

6 a. a nursing facility or specialized facility as such
7 terms are defined in the Nursing Home Care Act,

8 b. a residential care home as such term is defined by the
9 Residential Care Act,

10 c. an adult day care center as such term is defined in the
11 Adult Day Care Act,

12 d. an assisted living center as such term is defined by
13 the Continuum of Care and Assisted Living Act,

14 e. a continuum of care facility as such term is defined by
15 the Continuum of Care and Assisted Living Act,

16 f. a home health or home care agency, and

17 g. the Department of Human Services, in its capacity as an
18 operator of any hospital or health care institution or
19 as a contractor with providers under the Medicaid State
20 Plan Personal Care Program;

21 3. "Home health or home care agency" means any person,
22 partnership, association, corporation or other organization which
23 administers, offers or provides health care services or supportive
24 assistance for compensation to three or more ill, disabled, or infirm

1 persons in the temporary or permanent residence of such persons, and
2 includes any subunits or branch offices of a parent home health or
3 home care agency; and

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

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

22 2. Except as otherwise specified by subsection D of this section,
23 an employer is authorized to obtain any criminal history ~~background~~
24 ~~records maintained by the Oklahoma State Bureau of Investigation~~

1 which the employer is required or authorized to request by the
2 provisions of this section.

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

11 4. The requirement of a criminal history background check ~~shall~~
12 may not apply to an offer of employment made to:

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

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

15 ~~5.~~ At the request of an employer, the Bureau or other private
16 entity shall conduct a criminal history background check and/or
17 national criminal history record search on any person employed by the
18 employer, including the persons specified in paragraph 4 of this
19 subsection at any time during the period of employment of such person.

20 C. 1. An employer may make an offer of temporary employment to
21 a nurse aide or other person pending the results of the ~~criminal~~
22 history background check and/or national criminal history record
23 search on the person. The employer in such instance shall provide to
24 the Bureau or other private entity the name and relevant information

1 relating to the person within seventy-two (72) hours after the date
2 the person accepts temporary employment. The employer shall not hire
3 or contract with a person on a permanent basis until the results of
4 the criminal history background check and/or national criminal
5 history record search are received.

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

12 D. 1. The Bureau or other private entity shall not provide to
13 the employer the criminal history background records of a person
14 being investigated pursuant to this section unless the criminal
15 records relate to:

- 16 a. any felony or misdemeanor classified as a crime against
17 the person,
- 18 b. any felony or misdemeanor classified as a crime against
19 public decency or morality,
- 20 c. any felony or misdemeanor classified as domestic abuse
21 pursuant to the provisions of the Protection from
22 Domestic Abuse Act,
- 23 d. a felony violation of any state statute intended to
24 control the possession or distribution of a Schedule I

1 through V drug pursuant to the Uniform Controlled
2 Dangerous Substances Act, and

3 e. any felony or misdemeanor classified as a crime against
4 property.

5 2. Within five (5) days of receiving a request to conduct a
6 criminal history background check and/or national criminal history
7 record search, the Bureau or other private entity shall complete the
8 criminal history background check and/or national criminal history
9 record search and report the results of the check to the requesting
10 employer.

11 E. Every employer who is subject to the provisions of this
12 section shall inform each applicant for employment, or each
13 prospective contract provider, as applicable, that the employer is
14 required to obtain a criminal history background record and/or
15 national criminal history record search before making an offer of
16 permanent employment or contract to a nurse aide or other person
17 described in subsection B of this section.

18 F. 1. If the results of a criminal history background check
19 and/or national criminal history record search reveal that the
20 subject person has been convicted of any of the following offenses,
21 the employer shall not hire or contract with the person:

22 a. assault, battery, or assault and battery with a
23 dangerous weapon,

24 b. aggravated assault and battery,

- c. murder or attempted murder,
- d. manslaughter, except involuntary manslaughter,
- e. rape, incest or sodomy,
- f. indecent exposure and indecent exhibition,
- g. pandering,
- h. child abuse,
- 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 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 and/or national criminal history record search 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

1 has been convicted of any of the offenses listed in paragraph 1 of
2 this subsection, the employer shall immediately terminate the
3 person's employment or contract. The provisions of this paragraph
4 shall not apply to an employee or contract provider of an employer
5 who has completed the requirements for certification and placement on
6 the nurse aide registry and who has been continuously employed by the
7 employer prior to January 1, 1992.

8 G. An employer shall not employ or continue employing a person
9 addicted to any Schedule I through V drug as specified by the Uniform
10 Controlled Dangerous Substances Act unless the person produces
11 evidence that the person has successfully completed a drug
12 rehabilitation program.

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

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

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

8 SECTION 2. This act shall become effective November 1, 2009.

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