

1 ENGROSSED SENATE  
2 BILL NO. 841

By: Branan of the Senate

3 and

4 Moore and Steele of the  
5 House

6  
7 [ public health - criminal history background checks -

8 certain fees -

9 effective date ]

10

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

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

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

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

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

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

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

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

4 B. 1. Except as otherwise provided by subsection C of this  
5 section, before any employer makes an offer to employ or to contract  
6 with a nurse aide or other person to provide nursing care, health-  
7 related services or supportive assistance to any individual ~~except~~  
8 ~~as provided by paragraph 4 of this subsection~~, the employer shall  
9 provide for a criminal history background check and/or a national  
10 criminal history record search to be made on the nurse aide or other  
11 person pursuant to the provisions of this section. The national  
12 criminal history record search may be made through the Oklahoma  
13 State Bureau of Investigation and/or a private entity which conducts  
14 national criminal history record searches. If the employer is a  
15 facility, home or institution which is part of a larger complex of  
16 buildings, the requirement of a criminal history background check  
17 and/or a national criminal history record search shall apply only to  
18 an offer of employment or contract made to a person who will work  
19 primarily in the immediate boundaries of the facility, home or  
20 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 and/or other private  
4 entity to conduct a criminal history background check and/or  
5 national criminal history record search on the person and shall  
6 provide to the Bureau or other private entity any relevant  
7 information required by the Bureau or other private entity to  
8 conduct the check. The employer shall pay a fee of Fifteen Dollars  
9 (\$15.00) to the Bureau for each criminal history background check  
10 that is conducted pursuant 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.~~ 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~~  
19 ~~pursuant 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~~  
23 ~~the Physical Therapy Practice Act,~~

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

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

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

- 17 a. any felony or misdemeanor classified as a crime  
18 against the person,
- 19 b. any felony or misdemeanor classified as a crime  
20 against public decency or morality,
- 21 c. any felony or misdemeanor classified as domestic abuse  
22 pursuant to the provisions of the Protection from  
23 Domestic Abuse Act,

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1 d. a felony violation of any state statute intended to  
2 control the possession or distribution of a Schedule I  
3 through V drug pursuant to the Uniform Controlled  
4 Dangerous Substances Act, and

5 e. any felony or misdemeanor classified as a crime  
6 against property.

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

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

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

1           2. If the results of a criminal history background check and/or  
2 national criminal history record search reveal that an employee or a  
3 person hired on a temporary basis pursuant to subsection C of this  
4 section or any other person who is an employee or contract provider  
5 has been convicted of any of the offenses listed in paragraph 1 of  
6 this subsection, the employer shall immediately terminate the  
7 person's employment or contract. The provisions of this paragraph  
8 shall not apply to an employee or contract provider of an employer  
9 who has completed the requirements for certification and placement  
10 on the nurse aide registry and who has been continuously employed by  
11 the employer prior to January 1, 1992.

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

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

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

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

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

12 Passed the Senate the 3rd day of March, 2009.

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Presiding Officer of the Senate

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16 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
17 2009.

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Presiding Officer of the House  
of Representatives

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