

CS for SB 841

1 THE STATE SENATE
2 Monday, February 23, 2009

3 Committee Substitute for
4 Senate Bill No. 841

5 COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 841 - By: Branam of the
6 Senate and Moore of the House.

7 [public health - criminal history background checks -
8 certain fees - effective date]

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

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

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

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

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~~

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,~~

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

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

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

- 18 a. any felony or misdemeanor classified as a crime
19 against the person,
20 b. any felony or misdemeanor classified as a crime
21 against public decency or morality,

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

- 5 a. assault, battery, or assault and battery with a
6 dangerous weapon,
- 7 b. aggravated assault and battery,
- 8 c. murder or attempted murder,
- 9 d. manslaughter, except involuntary manslaughter,
- 10 e. rape, incest or sodomy,
- 11 f. indecent exposure and indecent exhibition,
- 12 g. pandering,
- 13 h. child abuse,
- 14 i. abuse, neglect or financial exploitation of any person
15 entrusted to the care or possession of such person,
- 16 j. burglary in the first or second degree,
- 17 k. robbery in the first or second degree,
- 18 l. robbery or attempted robbery with a dangerous weapon,
19 or imitation firearm,
- 20 m. arson in the first or second degree,
- 21 n. unlawful possession or distribution, or intent to
22 distribute unlawfully, Schedule I through V drugs as

1 defined by the Uniform Controlled Dangerous Substances
2 Act,
3 o. grand larceny, or
4 p. petit larceny or shoplifting within the past seven (7)
5 years.

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

17 G. An employer shall not employ or continue employing a person
18 addicted to any Schedule I through V drug as specified by the
19 Uniform Controlled Dangerous Substances Act unless the person
20 produces evidence that the person has successfully completed a drug
21 rehabilitation program.

22 H. All criminal records received by the employer are
23 confidential and are for the exclusive use of the State Department

1 of Health and the employer which requested the information. Except
2 on court order or with the written consent of the person being
3 investigated, the records shall not be released or otherwise
4 disclosed to any other person or agency. These records shall be
5 destroyed after one (1) year from the end of employment of the
6 person to whom such records relate.

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

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

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

18 COMMITTEE REPORT BY: COMMITTEE ON HEALTH & HUMAN SERVICES, dated
19 2-19-09 - DO PASS, As Amended and Coauthored.