

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 2744

By: Ownbey

4
5
6 AS INTRODUCED

7 An Act relating to public health and safety; amending
8 63 O.S. 2001, Sections 1-870, 1-871, 1-872, 1-873, 1-
9 874, 1-875 and 1-876, which relate to the Adult Day
10 Care Act; modifying legislative findings; changing
11 name of act; defining term; requiring licensing of
12 sheltered workshops; providing application
13 requirements; providing certain penalties for certain
14 violations; authorizing certain inspections; amending
15 63 O.S. 2001, Section 1-1950.1, as last amended by
16 Section 12, Chapter 436, O.S.L. 2004 (63 O.S. Supp.
17 2009, Section 1-1950.1), which relates to criminal
18 background check requirements; specifying that
19 sheltered workshops shall be subject to background
20 check requirements; and providing an effective date.

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

22 SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-870, is
23 amended to read as follows:

24 Section 1-870. The Oklahoma State Legislature hereby finds and
declares that there is an inadequate range of community-based
services for frail elderly ~~and~~ adults as well as disabled adults and
that there is an urgent need to establish, support and regulate a

1 community-based system of quality adult day care programs and
2 sheltered workshops to:

3 1. Provide a protective social environment which may include
4 health remedial, restorative and social services designed to
5 maintain maximum independence and to prevent premature or
6 inappropriate institutionalization of functionally impaired elderly
7 or disabled adults;

8 2. Provide periods of relief for family caregivers, sometimes
9 called respite care, to enable them to continue caring for an
10 impaired person at home; ~~and~~

11 3. Enable family caregivers to continue gainful employment; and

12 4. Provide a safe environment for disabled adults employed at
13 sheltered workshops.

14 SECTION 2. AMENDATORY 63 O.S. 2001, Section 1-871, is
15 amended to read as follows:

16 Section 1-871. ~~Section 2 through 9~~ Sections 1-870 through 1-878
17 of this ~~act~~ title shall be known and may be cited as the "Adult Day
18 Care and Sheltered Workshop Act".

19 SECTION 3. AMENDATORY 63 O.S. 2001, Section 1-872, is
20 amended to read as follows:

21 Section 1-872. As used in the Adult Day Care and Sheltered
22 Workshop Act:

23 1. "Adult day care center" or "center" means a facility which
24 provides basic day care services to unrelated impaired adults for

1 more than four (4) hours in a twenty-four-hour period. A center
2 shall be a distinct entity, either freestanding or a separate
3 program of a larger organization. A center shall have a separately
4 verifiable staff, space, budget and participant record system. The
5 terms "adult day care center" or "center" shall not include
6 retirement centers and senior citizen centers;

7 2. "Basic day care services" means supervised health, social
8 supportive, and recreational services in a structured daytime
9 program which serves functionally impaired adults who continue to
10 live in their own homes, usually with the aid of family care givers;

11 3. "Department" means the State Department of Health; ~~and~~

12 4. "Participant" means any person attending an adult day care
13 center; and

14 5. "Sheltered workshop" means a qualified nonprofit agency for
15 the severely handicapped which is certified by the wage and hour
16 division of the U.S. Department of Labor and employing severely
17 disabled persons who constitute at least seventy-five percent (75%)
18 of the personnel engaged in direct production of products or
19 services offered by the agency for procurement by this state.

20 SECTION 4. AMENDATORY 63 O.S. 2001, Section 1-873, is
21 amended to read as follows:

22 Section 1-873. A. The State Board of Health, with the advice
23 of the Long-Term Care Facility Advisory Board, created pursuant to
24 Section 1-1923 of ~~Title 63 of the Oklahoma Statutes~~ this title,

1 shall define minimum adult day care licensure requirements and rules
2 including standards for:

3 1. Health and social services which may be provided to
4 participants;

5 2. The range of services to be provided by a center based on
6 the type of participants to be served;

7 3. Staff_to_participant ratios;

8 4. Staff and volunteer qualifications;

9 5. Staff training;

10 6. Food services;

11 7. Participant records and care plans;

12 8. Antidiscrimination policies;

13 9. Sanitary and fire standards; and

14 10. Any other requirements necessary to ensure the safety and
15 well-being of frail elderly and disabled adults.

16 B. Centers to be licensed shall include all adult day care
17 centers. ~~Sheltered and sheltered workshops and senior.~~ Senior
18 recreational centers which do not receive participant fees for
19 services are not required to be licensed. It shall be unlawful to
20 operate a center or workshop without first obtaining a license for
21 such operation as required by the Adult Day Care and Sheltered
22 Workshop Act, regardless of other licenses held by the operator.
23 Organizations operating more than one center or workshop shall
24 obtain a license for each site.

1 C. The license for operation of a center or sheltered workshop
2 shall be issued by the State Department of Health. The license
3 shall:

4 1. Not be transferable or assignable;

5 2. Be posted in a conspicuous place on the licensed premises;

6 3. Be issued only for the premises named in the application;

7 and

8 4. Expire on July 31 of each year, provided an initial license
9 shall expire one hundred eighty (180) days after the date of
10 issuance.

11 D. A center or sheltered workshop shall meet the safety,
12 sanitation and food service standards of the State Department of
13 Health.

14 E. Local health, fire and building codes relating to adult day
15 care centers and workshops shall be classified as an education use
16 group.

17 F. The issuance or renewal of a license after notice of a
18 violation has been sent shall not constitute a waiver by the State
19 Department of Health of its power to subsequently revoke the license
20 or take other enforcement action for any violations of the Adult Day
21 Care and Sheltered Workshop Act committed prior to issuance or
22 renewal of the license.

23 SECTION 5. AMENDATORY 63 O.S. 2001, Section 1-874, is
24 amended to read as follows:

1 Section 1-874. A. An applicant for a license to operate an
2 adult day care center or sheltered workshop must file an application
3 on a form approved by the State Department of Health and pay an
4 initial license fee which shall be determined by the Department.

5 B. Applications for license renewal must be filed at least
6 forty-five (45) days before the expiration date of the current
7 license on a form approved by the Department and a license renewal
8 fee must be paid which shall be determined by the Department. The
9 annual license renewal fee shall not exceed Seventy-five Dollars
10 (\$75.00). Revenue generated by the collection of license fees shall
11 be deposited into the Department revolving fund, and shall be used
12 to help finance the costs associated with the licensing of such
13 center or workshop.

14 C. The applicant must provide evidence of compliance with the
15 requirements of all applicable federal, state and local laws and
16 regulations. In addition to other requirements, an applicant shall
17 provide a statement of ownership and a financial statement.

18 SECTION 6. AMENDATORY 63 O.S. 2001, Section 1-875, is
19 amended to read as follows:

20 Section 1-875. The State Department of Health shall at least
21 annually and whenever it deems necessary inspect each adult day care
22 center and sheltered workshop to determine compliance with the Adult
23 Day Care and Sheltered Workshop Act and rules and regulations
24 promulgated pursuant thereto.

1 Any licensee or applicant for a license shall be deemed to have
2 given consent to any duly authorized employee or agent of the
3 Department to inspect and enter the home or workshop in accordance
4 with the Adult Day Care and Sheltered Workshop Act or rules
5 promulgated pursuant thereto. Refusal to permit such entry or
6 inspection may constitute grounds for the denial, nonrenewal,
7 suspension or revocation of a license.

8 SECTION 7. AMENDATORY 63 O.S. 2001, Section 1-876, is
9 amended to read as follows:

10 Section 1-876. A. The State Department of Health may deny,
11 suspend, deny renewal or revoke the license of an applicant or a
12 licensed adult day care center or sheltered workshop which fails to
13 comply with the licensing requirements and rules and regulations
14 specified by the provisions of the Adult Day Care and Sheltered
15 Workshop Act.

16 B. The Department shall give a center or sheltered workshop
17 thirty (30) days' written notice that its license is to be suspended
18 or revoked, and shall take action at the end of that time if the
19 center or sheltered workshop is still out of compliance. However,
20 if the health and safety of participants is threatened, the
21 suspension or revocation shall be effective immediately, and the
22 center or sheltered workshop closed.

23 C. Holders of suspended or revoked licenses shall be entitled
24 to a hearing before Department licensure officials if requested

1 within ten (10) days of their notification. The hearing shall be
2 held at least ten (10) days before final action is taken and
3 conducted pursuant to the Administrative Procedures Act.

4 D. Suspended licenses may be reinstated if deficiencies are
5 corrected within a time frame established by the Department.

6 SECTION 8. AMENDATORY 63 O.S. 2001, Section 1-1950.1, as
7 last amended by Section 12, Chapter 436, O.S.L. 2004 (63 O.S. Supp.
8 2009, Section 1-1950.1), is amended to read as follows:

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

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

19 2. "Employer" means any of the following facilities, homes,
20 workshops, agencies or programs which are subject to the provision
21 of this section:

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

24

- 1 b. a residential care home as such term is defined by the
2 Residential Care Act,
3 c. an adult day care center as such term is defined in
4 the Adult Day Care and Sheltered Workshop Act,
5 d. an assisted living center as such term is defined by
6 the Continuum of Care and Assisted Living Act,
7 e. a continuum of care facility as such term is defined
8 by the Continuum of Care and Assisted Living Act,
9 f. a home health or home care agency, ~~and~~
10 g. a sheltered workshop, and
11 h. the Department of Human Services, in its capacity as
12 an operator of any hospital or health care institution
13 or as a contractor with providers under the Medicaid
14 State Plan Personal Care Program;

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

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

23 B. 1. Except as otherwise provided by subsection C of this
24 section, before any employer makes an offer to employ or to contract

1 with a nurse aide or other person to provide nursing care, health-
2 related services or supportive assistance to any individual except
3 as provided by paragraph 4 of this subsection, the employer shall
4 provide for a criminal history background check to be made on the
5 nurse aide or other person pursuant to the provisions of this
6 section. If the employer is a facility, home or institution which
7 is part of a larger complex of buildings, the requirement of a
8 criminal history background check shall apply only to an offer of
9 employment or contract made to a person who will work primarily in
10 the immediate boundaries of the facility, home or institution.

11 2. Except as otherwise specified by subsection D of this
12 section, an employer is authorized to obtain any criminal history
13 background records maintained by the Oklahoma State Bureau of
14 Investigation which the employer is required or authorized to
15 request by the provisions of this section.

16 3. The employer shall request the Bureau to conduct a criminal
17 history background check on the person and shall provide to the
18 Bureau any relevant information required by the Bureau to conduct
19 the check. The employer shall pay a fee of Fifteen Dollars (\$15.00)
20 to the Bureau for each criminal history background check that is
21 conducted pursuant to such a request.

22 4. The requirement of a criminal history background check shall
23 not apply to an offer of employment made to:
24

- 1 a. a nursing home administrator licensed pursuant to the
2 provisions of Section 330.53 of this title,
- 3 b. any person who is the holder of a current license or
4 certificate issued pursuant to the laws of this state
5 authorizing such person to practice the healing arts,
- 6 c. a registered nurse or practical nurse licensed
7 pursuant to the Oklahoma Nursing Practice Act,
- 8 d. a physical therapist registered pursuant to the
9 Physical Therapy Practice Act,
- 10 e. a physical therapist assistant licensed pursuant to
11 the Physical Therapy Practice Act,
- 12 f. a social worker licensed pursuant to the provisions of
13 the Social Worker's Licensing Act,
- 14 g. a speech pathologist or audiologist licensed pursuant
15 to the Speech-Language Pathology and Audiology
16 Licensing Act,
- 17 h. a dietitian licensed pursuant to the provisions of the
18 Licensed Dietitian Act,
- 19 i. an occupational therapist licensed pursuant to the
20 Occupational Therapy Practice Act, or
- 21 j. an individual who is to be employed by a nursing
22 service conducted by and for the adherents of any
23 religious denomination, the tenets of which include
24

1 reliance on spiritual means through prayer alone for
2 healing.

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

8 C. 1. An employer may make an offer of temporary employment to
9 a nurse aide or other person pending the results of the criminal
10 history background check on the person. The employer in such
11 instance shall provide to the Bureau the name and relevant
12 information relating to the person within seventy-two (72) hours
13 after the date the person accepts temporary employment. The
14 employer shall not hire or contract with a person on a permanent
15 basis until the results of the criminal history background check are
16 received.

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

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

- 1 a. any felony or misdemeanor classified as a crime
2 against the person,
- 3 b. any felony or misdemeanor classified as a crime
4 against public decency or morality,
- 5 c. any felony or misdemeanor classified as domestic abuse
6 pursuant to the provisions of the Protection from
7 Domestic Abuse Act,
- 8 d. a felony violation of any state statute intended to
9 control the possession or distribution of a Schedule I
10 through V drug pursuant to the Uniform Controlled
11 Dangerous Substances Act, and
- 12 e. any felony or misdemeanor classified as a crime
13 against property.

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

18 E. Every employer who is subject to the provisions of this
19 section shall inform each applicant for employment, or each
20 prospective contract provider, as applicable, that the employer is
21 required to obtain a criminal history background record before
22 making an offer of permanent employment or contract to a nurse aide
23 or other person described in subsection B of this section.

1 F. 1. If the results of a criminal history background check
2 reveal that the subject person has been convicted of any of the
3 following offenses, the employer shall not hire or contract with the
4 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
23 defined by the Uniform Controlled Dangerous Substances
24 Act,

1 o. grand larceny, or

2 p. petit larceny or shoplifting within the past seven (7)
3 years.

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

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

20 H. All criminal records received by the employer are
21 confidential and are for the exclusive use of the State Department
22 of Health and the employer which requested the information. Except
23 on court order or with the written consent of the person being
24 investigated, the records shall not be released or otherwise

1 disclosed to any other person or agency. These records shall be
2 destroyed after one (1) year from the end of employment of the
3 person to whom such records relate.

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

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

15 SECTION 9. This act shall become effective November 1, 2010.

16

17 52-2-9479 SDR 01/12/10

18

19

20

21

22

23

24