

1 STATE OF OKLAHOMA

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

3 SENATE BILL 436

By: Rice of the Senate

4 and

5 Terrill of the House

6
7
8 AS INTRODUCED

9 An Act relating to public health and safety; amending
10 Section 1, Chapter 411, O.S.L. 2008 (63 O.S. Supp.
11 2008, Section 1-849), which relates to a long-term
12 care facility for sex offenders; expanding list of
13 persons who may live in specified long-term care
14 facility; amending 63 O.S. 2001, Sections 1-1939, as
15 amended by Section 2, Chapter 429, O.S.L. 2003 and 1-
16 1950.1, as last amended by Section 12, Chapter 436,
17 O.S.L. 2004 (63 O.S. Supp. 2008, Sections 1-1939 and
18 1-1950.1), which relate to the Nursing Home Care Act;
19 expanding certain list of reportable acts; requiring
20 facility administrators to preserve the scene of a
21 crime until law enforcement arrives; directing certain
22 examination in specified circumstances; expanding list
23 of persons who shall be subject to certain search;
24 directing certain facilities to provide for a national
criminal history record search on certain persons;
clarifying language; providing for certain fee;
defining terms; requiring certain facilities to
provide for criminal history background checks on
certain persons in specified circumstances; permitting
certain facilities to accept certain reports;
prohibiting Oklahoma State Bureau of Investigation
from providing certain information; directing the
Bureau to conduct certain check in specified time
period; requiring facilities to provide certain
information; requiring certain notification; providing
for confidentiality of certain information; providing
for certain penalties; directing certain review;
requiring certain facilities to make certain
notification; directing the State Department of Health

1 to establish and maintain certain database; permitting
2 certain facilities to access certain information;
3 providing for codification; and providing an effective
4 date.

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

6 SECTION 1. AMENDATORY Section 1, Chapter 411, O.S.L. 2008
7 (63 O.S. Supp. 2008, Section 1-849), is amended to read as follows:

8 Section 1-849. A. The State Department of Health shall initiate
9 a request for proposal for the operation of a stand-alone long-term
10 care facility for ~~sex~~:

- 11 1. Sex offenders who are assigned a numeric risk level of I, II
12 or III as provided in the Sex Offenders Registration Act;
- 13 2. Inmates;
- 14 3. Parolees;
- 15 4. Violent offenders found incompetent to stand trial;
- 16 5. Sex offenders who are not required to register;
- 17 6. Violent felons; and
- 18 7. Residents who assault others but are not charged with a crime.

19 The request for proposal shall set forth surveillance and security
20 specifications providing for heightened security of residents to
21 protect the public and residents of the facility.

22 B. The State Board of Health shall promulgate rules and
23 establish procedures necessary to implement the request for proposal
24 and the operation of the stand-alone long-term care facility ~~for~~

1 ~~Level II and III sex offenders~~ as specified in subsection A of this
2 section.

3 SECTION 2. AMENDATORY 63 O.S. 2001, Section 1-1939, as
4 amended by Section 2, Chapter 429, O.S.L. 2003 (63 O.S. Supp. 2008,
5 Section 1-1939), is amended to read as follows:

6 Section 1-1939. A. The owner and licensee are liable to a
7 resident for any intentional or negligent act or omission of their
8 agents or employees which injures the resident. In addition, any
9 state employee that aids, abets, assists, or conspires with an owner
10 or licensee to perform an act that causes injury to a resident shall
11 be individually liable.

12 B. A resident may maintain an action under the Nursing Home Care
13 Act for any other type of relief, including injunctive and
14 declaratory relief, permitted by law.

15 C. Any damages recoverable under this section, including minimum
16 damages as provided by this section, may be recovered in any action
17 which a court may authorize to be brought as a class action. The
18 remedies provided in this section, are in addition to and cumulative
19 with any other legal remedies available to a resident. Exhaustion of
20 any available administrative remedies shall not be required prior to
21 commencement of suit hereunder.

22 D. Any waiver by a resident or the legal representative of the
23 resident of the right to commence an action under this section,
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1 whether oral or in writing, shall be null and void, and without legal
2 force or effect.

3 E. Any party to an action brought under this section shall be
4 entitled to a trial by jury and any waiver of the right to a trial by
5 a jury, whether oral or in writing, prior to the commencement of an
6 action, shall be null and void, and without legal force or effect.

7 F. A licensee or its agents or employees shall not transfer,
8 discharge, evict, harass, dismiss or retaliate against a resident, a
9 resident's guardian or an employee or agent who makes a report,
10 brings, or testifies in, an action under this section, or files a
11 complaint because of a report, testimony or complaint.

12 G. Any person, institution or agency, under the Nursing Home
13 Care Act, participating in good faith in the making of a report, or
14 in the investigation of such a report shall not be deemed to have
15 violated any privileged communication and shall have immunity from
16 any liability, civil or criminal, or any other proceedings, civil or
17 criminal, as a consequence of making such report. The good faith of
18 any persons required, or permitted to report cases of suspected
19 resident abuse or neglect under this act shall be presumed.

20 H. A facility employee or agent who becomes aware of abuse,
21 neglect or exploitation of a resident prohibited by the Nursing Home
22 Care Act or any other criminal act involving a resident shall
23 immediately report the matter to the facility administrator. A
24 facility administrator who becomes aware of abuse, neglect, or

1 exploitation of a resident or any other criminal act involving a
2 resident shall immediately act to rectify the problem and shall make
3 a report of the incident and its correction to the Department.

4 I. 1. The facility shall be responsible for reporting the
5 following serious incidents to the Department within twenty-four (24)
6 hours:

- 7 a. communicable diseases,
- 8 b. deaths by unusual occurrence, including accidental
9 deaths or deaths other than by natural causes, and
10 deaths that may be attributed to a medical device,
- 11 c. missing residents. In addition, the facility shall
12 make a report to local law enforcement agencies within
13 two (2) hours if the resident is still missing,
- 14 d. situations arising where criminal intent is suspected.
15 Such situations shall also be reported to local law
16 enforcement, and
- 17 e. resident abuse, neglect and misappropriation of the
18 property of a resident.

19 2. All other incident reports shall be made in accordance with
20 federal law.

21 3. All initial written reports of incidents or situations shall
22 be mailed to the Department within five (5) working days after the
23 incident or situation. The final report shall be filed with the
24 Department when the full investigation is complete.

1 J. In accordance with other provisions of law, a facility
2 administrator shall preserve the scene in which any criminal act has
3 taken place until the arrival of law enforcement.

4 K. If sexual assault is suspected, the facility administrator
5 shall arrange for an examination by a sexual assault nurse examiner.
6 If a sexual assault nurse examiner is not available, a rape
7 examination shall be conducted by a physician or registered nurse.

8 SECTION 3. AMENDATORY 63 O.S. 2001, Section 1-1950.1, as
9 last amended by Section 12, Chapter 436, O.S.L. 2004 (63 O.S. Supp.
10 2008, Section 1-1950.1), is amended to read as follows:

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

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

21 2. "Employer" means any of the following facilities, homes,
22 agencies or programs which are subject to the provision of this
23 section:
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- a. a nursing facility or specialized facility as such terms are defined in the Nursing Home Care Act,
- b. a residential care home as such term is defined by the Residential Care Act,
- c. an adult day care center as such term is defined in the Adult Day Care Act,
- d. an assisted living center as such term is defined by the Continuum of Care and Assisted Living Act,
- e. a continuum of care facility as such term is defined by the Continuum of Care and Assisted Living Act,
- f. a home health or home care agency, and
- g. the Department of Human Services, in its capacity as an operator of any hospital or health care institution or as a contractor with providers under the Medicaid State Plan Personal Care Program;

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

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

1 B. 1. Except as otherwise provided by subsection C of this
2 section, before any employer makes an offer to employ or to contract
3 with any person, including, but not limited to, a nurse aide or other
4 person to provide nursing care, health-related services or supportive
5 assistance to any individual, except as provided by paragraph 4 of
6 this subsection, the employer shall provide for a ~~criminal history~~
7 ~~background check~~ national criminal history record search to be made
8 on the ~~nurse aide or other~~ person pursuant to the provisions of this
9 section. If the employer is a facility, home or institution which is
10 part of a larger complex of buildings, the requirement of a ~~criminal~~
11 ~~history background check~~ national criminal history record search
12 shall apply only to an offer of employment or contract made to a
13 person who will work primarily in the immediate boundaries of the
14 facility, home or institution.

15 2. Except as otherwise specified by subsection D of this section,
16 an employer is authorized to obtain any criminal history ~~background~~
17 records maintained by the Oklahoma State Bureau of Investigation or
18 the United States Federal Bureau of Investigation (FBI) which the
19 employer is required or authorized to request by the provisions of
20 this section.

21 3. The employer shall request the Oklahoma State Bureau of
22 Investigation to conduct a ~~criminal history background check~~ national
23 criminal history record search on the person and shall provide to the
24 Bureau any relevant information required by the Bureau to conduct the

1 check. The employer shall pay a fee of ~~Fifteen Dollars (\$15.00)~~ as
2 specified in Section 150.9 of Title 74 of the Oklahoma Statutes to
3 the Bureau for each ~~criminal history background check~~ national
4 criminal history record search that is conducted pursuant to such a
5 request.

6 4. The requirement of a ~~criminal history background check~~
7 national criminal history record search shall not apply to an offer
8 of employment made to:

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

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

10 5. At the request of an employer, the Bureau shall conduct a
11 ~~criminal history background check~~ national criminal history record
12 search on any person employed by the employer, including the persons
13 specified in paragraph 4 of this subsection, at any time during the
14 period of employment of such person.

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

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

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

- 11 a. any felony or misdemeanor classified as a crime against
12 the person,
- 13 b. any felony or misdemeanor classified as a crime against
14 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 against
23 property.

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

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

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

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

- 1 h. child abuse,
- 2 i. abuse, neglect or financial exploitation of any person
- 3 entrusted to the care or possession of such person,
- 4 j. burglary in the first or second degree,
- 5 k. robbery in the first or second degree,
- 6 l. robbery or attempted robbery with a dangerous weapon,
- 7 or imitation firearm,
- 8 m. arson in the first or second degree,
- 9 n. unlawful possession or distribution, or intent to
- 10 distribute unlawfully, Schedule I through V drugs as
- 11 defined by the Uniform Controlled Dangerous Substances
- 12 Act,
- 13 o. grand larceny, or
- 14 p. petit larceny or shoplifting within the past seven (7)
- 15 years.

16 2. If the results of a ~~criminal history background check~~
17 national criminal history record search reveal that an employee or a
18 person hired on a temporary basis pursuant to subsection C of this
19 section or any other person who is an employee or contract provider
20 has been convicted of any of the offenses listed in paragraph 1 of
21 this subsection, the employer shall immediately terminate the
22 person's employment or contract. The provisions of this paragraph
23 shall not apply to an employee or contract provider of an employer
24 who has completed the requirements for certification and placement on

1 the nurse aide registry and who has been continuously employed by the
2 employer prior to January 1, 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 Uniform
5 Controlled Dangerous Substances Act unless the person produces
6 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 of
10 Health and the employer which requested the information. Except on
11 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 person
15 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 this
18 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 shall
22 review the employment files of any facility, home or institution
23 required to obtain criminal history ~~background~~ records to ensure such
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1 facilities, homes or institutions are in compliance with the
2 provisions of this section.

3 SECTION 4. NEW LAW A new section of law to be codified in
4 the Oklahoma Statutes as Section 1-1950.1a of Title 63, unless there
5 is created a duplication in numbering, reads as follows:

6 A. For purposes of this section:

7 1. "Facility" means:

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

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

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

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

16 2. "Bureau" means the Oklahoma State Bureau of Investigation.

17 B. 1. Before any facility agrees to accept a new resident, the
18 facility shall provide for a criminal history background check to be
19 made on the person pursuant to the provisions of this section.

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

1 3. The facility shall request the Bureau to conduct a criminal
2 history background check on the person and shall provide to the
3 Bureau any relevant information required by the Bureau to conduct the
4 check. The facility shall pay a fee as specified in Section 150.9 of
5 Title 74 of the Oklahoma Statutes to the Bureau for each criminal
6 history background check that is conducted pursuant to such a request.

7 4. At the request of a facility, the Bureau shall conduct a
8 criminal history background check on any person currently residing at
9 a facility at any time during the period the person is a resident.

10 C. 1. A facility may temporarily accept a resident pending the
11 results of the criminal history background on the person. The
12 facility in such instance shall provide to the Bureau the name and
13 relevant information relating to the person within seventy-two (72)
14 hours after the date the person becomes a temporary resident. The
15 facility shall not agree to accept the person as a resident on a
16 permanent basis until the results of the criminal history background
17 check are received.

18 2. A facility may accept a criminal history background report
19 less than one (1) year old of a person who seeks to become a resident
20 of the facility. The report shall be obtained from the previous
21 facility in which such person was a resident and shall only be
22 obtained upon the written consent of the person.

1 D. 1. The Bureau shall not provide to the facility the criminal
2 history background records of a person being investigated pursuant to
3 this section unless the criminal records relate to:

4 a. any felony or misdemeanor classified as a crime against
5 the person,

6 b. any felony or misdemeanor classified as a crime against
7 public decency or morality,

8 c. any felony or misdemeanor classified as domestic abuse
9 pursuant to the provisions of the Protection from
10 Domestic Abuse Act,

11 d. a felony violation of any state statute intended to
12 control the possession or distribution of a Schedule I
13 through V drug pursuant to the Uniform Controlled
14 Dangerous Substances Act, and

15 e. any felony or misdemeanor classified as a crime against
16 property.

17 2. Within five (5) days of receiving a request to conduct a
18 criminal history background check, the Bureau shall complete the
19 criminal history background check and report the results of the check
20 to the requesting facility.

21 E. Every facility who is subject to the provisions of this
22 section shall inform each potential resident that the facility is
23 required to obtain a criminal history background record before
24 accepting a person as a resident.

1 F. If the results of a criminal history background check reveal
2 that the subject person has been convicted of any violent offenses
3 and/or sex offenses, the facility shall notify the State Department
4 of Health pursuant to Section 5 of this act.

5 G. All criminal records received by the facility are
6 confidential and are for the exclusive use of the State Department of
7 Health and the facility which requested the information. Except on
8 court order or with the written consent of the person being
9 investigated, the records shall not be released or otherwise
10 disclosed to any other person or agency. These records shall be
11 destroyed after one (1) year from the end of the period that the
12 person was a resident.

13 H. Any person releasing or disclosing any information received
14 pursuant to this section without the authorization prescribed by this
15 section shall be guilty of a misdemeanor.

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

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1 SECTION 5. NEW LAW A new section of law to be codified in
2 the Oklahoma Statutes as Section 1-1950.1b of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Any nursing facility, specialized facility, residential care
5 home, assisted living center or continuum of care facility shall
6 notify the State Department of Health of any residents who:

7 1. Are registered sex offenders pursuant to the Sex Offenders
8 Registration Act;

9 2. Have been convicted of a violent crime; or

10 3. Have assaulted other residents at the facility, but have not
11 been charged with an offense.

12 B. The State Department of Health shall establish and maintain a
13 database to track the residents specified in subsection A of this
14 section. At a minimum, the database shall contain information on the
15 criminal history of such residents and any reported violent and/or
16 sexual assaults committed by the residents at a nursing facility,
17 specialized facility, residential care home, assisted living center
18 or continuum of care facility.

19 C. Any nursing facility, specialized facility, residential care
20 home, assisted living center or continuum of care facility shall be
21 authorized to access the database described in subsection B of this
22 section upon request in order to obtain information on a current or
23 potential resident of the faculty.

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SECTION 6. This act shall become effective November 1, 2009.

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