

1 STATE OF OKLAHOMA

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

3 SENATE BILL 756

By: Rice

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5  
6 AS INTRODUCED

7 An Act relating to public health and safety; amending  
8 63 O.S. 2001, Section 1-1950.1, as last amended by  
9 Section 12, Chapter 436, O.S.L. 2004 (63 O.S. Supp.  
10 2008, Section 1-1950.1), which relates to the Nursing  
11 Home Care Act; deleting certain exemption; and  
12 providing an effective date.

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 to be made on the  
11 nurse aide or other person pursuant to the provisions of this section.  
12 If the employer is a facility, home or institution which is part of a  
13 larger complex of buildings, the requirement of a criminal history  
14 background check shall apply only to an offer of employment or  
15 contract made to a person who will work primarily in the immediate  
16 boundaries of the facility, home or institution.

17 2. Except as otherwise specified by subsection D of this section,  
18 an employer is authorized to obtain any criminal history background  
19 records maintained by the Oklahoma State Bureau of Investigation  
20 which the employer is required or authorized to request by the  
21 provisions of this section.

22 3. The employer shall request the Bureau to conduct a criminal  
23 history background check 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) to  
2 the Bureau for each criminal history background check that is  
3 conducted pursuant to such a request.

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

6 a. ~~a nursing home administrator licensed pursuant to the~~  
7 ~~provisions of Section 330.53 of this title,~~

8 b. ~~any person who is the holder of a current license or~~  
9 ~~certificate issued pursuant to the laws of this state~~  
10 ~~authorizing such person to practice the healing arts,~~

11 c. ~~a registered nurse or practical nurse licensed pursuant~~  
12 ~~to the Oklahoma Nursing Practice Act,~~

13 d. ~~a physical therapist registered pursuant to the~~  
14 ~~Physical Therapy Practice Act,~~

15 e. ~~a physical therapist assistant licensed pursuant to the~~  
16 ~~Physical Therapy Practice Act,~~

17 f. ~~a social worker licensed pursuant to the provisions of~~  
18 ~~the Social Worker's Licensing Act,~~

19 g. ~~a speech pathologist or audiologist licensed pursuant~~  
20 ~~to the Speech Language Pathology and Audiology~~  
21 ~~Licensing Act,~~

22 h. ~~a dietitian licensed pursuant to the provisions of the~~  
23 ~~Licensed Dietitian Act,~~

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

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

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

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

1 D. 1. The Bureau shall not provide to the employer 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 employer.

21 E. Every employer who is subject to the provisions of this  
22 section shall inform each applicant for employment, or each  
23 prospective contract provider, as applicable, that the employer is  
24 required to obtain a criminal history background record before making

1 an offer of permanent employment or contract to a nurse aide or other  
2 person described in subsection B of this section.

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

- 7 a. assault, battery, or assault and battery with a  
8 dangerous weapon,
- 9 b. aggravated assault and battery,
- 10 c. murder or attempted murder,
- 11 d. manslaughter, except involuntary manslaughter,
- 12 e. rape, incest or sodomy,
- 13 f. indecent exposure and indecent exhibition,
- 14 g. pandering,
- 15 h. child abuse,
- 16 i. abuse, neglect or financial exploitation of any person  
17 entrusted to the care or possession of such person,
- 18 j. burglary in the first or second degree,
- 19 k. robbery in the first or second degree,
- 20 l. robbery or attempted robbery with a dangerous weapon,  
21 or imitation firearm,
- 22 m. arson in the first or second degree,
- 23 n. unlawful possession or distribution, or intent to  
24 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 reveal  
7 that an employee or a person hired on a temporary basis pursuant to  
8 subsection C of this section or any other person who is an employee  
9 or contract provider has been convicted of any of the offenses listed  
10 in paragraph 1 of this subsection, the employer shall immediately  
11 terminate the person's employment or contract. The provisions of  
12 this paragraph shall not apply to an employee or contract provider of  
13 an employer who has completed the requirements for certification and  
14 placement on the nurse aide registry and who has been continuously  
15 employed by the employer prior to January 1, 1992.

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

21 H. All criminal records received by the employer are  
22 confidential and are for the exclusive use of the State Department of  
23 Health and the employer which requested the information. Except on  
24 court order or with the written consent of the person being

1 investigated, the records shall not be released or otherwise  
2 disclosed to any other person or agency. These records shall be  
3 destroyed after one (1) year from the end of employment of the person  
4 to whom such records relate.

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

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

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

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