

1 STATE OF OKLAHOMA

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

3 SENATE BILL 841

By: Branan

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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 criminal
11 history background checks; directing certain
12 facilities to provide for a national criminal history
13 record search on certain persons; permitting certain
14 searches to be performed by specified entities;
15 providing for certain entities to perform certain
16 searches; providing for certain fees; and providing
17 an effective date.

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

19 SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1950.1, as
20 last amended by Section 12, Chapter 436, O.S.L. 2004 (63 O.S. Supp.
21 2008, Section 1-1950.1), is amended to read as follows:

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

23 1. "Nurse aide" means any person who provides, for
24 compensation, nursing care or health-related services to residents
in a nursing facility, a specialized facility, a residential care
home, continuum of care facility, assisted living center or an adult
day care center and who is not a licensed health professional. Such

1 term also means any person who provides such services to individuals
2 in their own homes as an employee or contract provider of a home
3 health or home care agency, or as a contract provider of the
4 Medicaid State Plan Personal Care Program;

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

- 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 adult day care center as such term is defined in
13 the Adult Day Care Act,
- 14 d. an assisted living center as such term is defined by
15 the Continuum of Care and Assisted Living Act,
- 16 e. a continuum of care facility as such term is defined
17 by the Continuum of Care and Assisted Living Act,
- 18 f. a home health or home care agency, and
- 19 g. the Department of Human Services, in its capacity as
20 an operator of any hospital or health care institution
21 or as a contractor with providers under the Medicaid
22 State Plan Personal Care Program;

23 3. "Home health or home care agency" means any person,
24 partnership, association, corporation or other organization which

1 administers, offers or provides health care services or supportive
2 assistance for compensation to three or more ill, disabled, or
3 infirm persons in the temporary or permanent residence of such
4 persons, and includes any subunits or branch offices of a parent
5 home health or home care agency; and

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

7 B. 1. Except as otherwise provided by subsection C of this
8 section, before any employer makes an offer to employ or to contract
9 with a nurse aide or other person to provide nursing care, health-
10 related services or supportive assistance to any individual ~~except~~
11 ~~as provided by paragraph 4 of this subsection~~, the employer shall
12 provide for a ~~criminal history background check~~ national criminal
13 history record search to be made on the nurse aide or other person
14 pursuant to the provisions of this section. The national criminal
15 history record search may be made through the Oklahoma State Bureau
16 of Investigation or a private entity which conducts national
17 criminal history record searches. If the employer is a facility,
18 home or institution which is part of a larger complex of buildings,
19 the requirement of a ~~criminal history background check~~ national
20 criminal history record search shall apply only to an offer of
21 employment or contract made to a person who will work primarily in
22 the immediate boundaries of the facility, home or institution.

23 2. Except as otherwise specified by subsection D of this
24 section, an employer is authorized to obtain any criminal history

1 ~~background records maintained by the Oklahoma State Bureau of~~
2 ~~Investigation~~ which the employer is required or authorized to
3 request by the provisions of this section.

4 3. The employer shall request the Bureau or other private
5 entity to conduct a ~~criminal history background check~~ national
6 criminal history record search on the person and shall provide to
7 the Bureau or other private entity any relevant information required
8 by the Bureau or other private entity to conduct the check. The
9 employer shall pay a fee ~~of Fifteen Dollars (\$15.00)~~ as specified in
10 Section 150.9 of Title 74 of the Oklahoma Statutes to the Bureau or
11 other fee as required by a private entity for each ~~criminal history~~
12 ~~background check~~ national criminal history record search that is
13 conducted pursuant to such a request.

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

- 16 a. ~~a nursing home administrator licensed pursuant to the~~
17 ~~provisions of Section 330.53 of this title,~~
- 18 b. ~~any person who is the holder of a current license or~~
19 ~~certificate issued pursuant to the laws of this state~~
20 ~~authorizing such person to practice the healing arts,~~
- 21 c. ~~a registered nurse or practical nurse licensed~~
22 ~~pursuant to the Oklahoma Nursing Practice Act,~~
- 23 d. ~~a physical therapist registered pursuant to the~~
24 ~~Physical Therapy Practice Act,~~

- 1 e. ~~a physical therapist assistant licensed pursuant to~~
2 ~~the Physical Therapy Practice Act,~~
- 3 f. ~~a social worker licensed pursuant to the provisions of~~
4 ~~the Social Worker's Licensing Act,~~
- 5 g. ~~a speech pathologist or audiologist licensed pursuant~~
6 ~~to the Speech Language Pathology and Audiology~~
7 ~~Licensing Act,~~
- 8 h. ~~a dietitian licensed pursuant to the provisions of the~~
9 ~~Licensed Dietitian Act,~~
- 10 i. ~~an occupational therapist licensed pursuant to the~~
11 ~~Occupational Therapy Practice Act, or~~
- 12 j. ~~an individual who is to be employed by a nursing~~
13 ~~service conducted by and for the adherents of any~~
14 ~~religious denomination, the tenets of which include~~
15 ~~reliance on spiritual means through prayer alone for~~
16 ~~healing.~~

17 5. At the request of an employer, the Bureau or other private
18 entity shall conduct a ~~criminal history background check~~ national
19 criminal history record search on any person employed by the
20 employer, ~~including the persons specified in paragraph 4 of this~~
21 ~~subsection~~ at any time during the period of employment of such
22 person.

23 C. 1. An employer may make an offer of temporary employment to
24 a nurse aide or other person pending the results of the ~~criminal~~

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

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

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

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

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

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

23 F. 1. If the results of a ~~criminal history background check~~
24 national criminal history record search reveal that the subject

1 person has been convicted of any of the following offenses, the
2 employer shall not hire or contract with the person:

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

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

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

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

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

1 destroyed after one (1) year from the end of employment of the
2 person to whom such records relate.

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

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

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

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