HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2582 By: McDaniel (Jeannie)

COMMITTEE SUBSTITUTE

An Act relating to public health and safety; amending 63 O.S. 2011, Section 1-1945, which relates to definitions; adding definitions; amending 63 O.S. 2011, Section 1-1947, which relates to employee background checks; requiring that certain employers not hire individuals under certain circumstances; requiring criminal history record background checks and fingerprints for applicants; amending 63 O.S. 2011, Section 1-1950.1, which relates to criminal background checks for nurse aides; authorizing certain employer to obtain any criminal history background record under certain conditions; preventing certain applicants from being hired under certain conditions; amending 63 O.S. 2011, Section 1-1950.4, which relates to a uniform employment application for nurse aides; requiring application to contain release statement giving authority to proceed with state or national criminal history record checks; amending 63 O.S. 2011, Section 1-1950.8, which relates to nontechnical services workers; authorizing certain employer to obtain any criminal history background record under certain conditions; amending 63 O.S. 2011, Section 1-1951, which relates to the certification, training and registration of nurse aides; preventing certain individual from receiving nurse aide certification; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-1945, is amended to read as follows:

Section 1-1945. For purposes of the Long-term Care Security Act:

1. "Long-term care facility" means:

a. a nursing facility, specialized facility, or residential care home as defined by Section 1-1902 of ~~Title 63 of the Oklahoma Statutes~~ this title,

b. an adult day care center as defined by Section 1-872 of ~~Title 63 of the Oklahoma Statutes~~ this title,

c. skilled nursing care provided in a distinct part of a hospital as defined by Section 1-701 of ~~Title 63 of the Oklahoma Statutes~~ this title,

d. an assisted living center as defined by Section 1-890.2 of ~~Title 63 of the Oklahoma Statutes~~ this title,

e. the nursing care component of a continuum of care facility as defined under the Continuum of Care and Assisted Living Act,

f. the nursing care component of a life care community as defined by the Long-term Care Insurance Act, or

g. a residential care home as defined by Section 1-820 of ~~Title 63 of the Oklahoma Statutes~~ this title; ~~and~~

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2. "Ombudsman" means the individual employed by the Department of Human Services as the State Long-Term Care Ombudsman;

3. "Nurse aide" means any person who provides, for 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 term also means any person who provides such services to individuals in their own homes as an employee or contract provider of a home health or home care agency, or as a contract provider of the Oklahoma Personal Care Program;

4. "Employer" means any of the following facilities, homes, agencies or programs which are subject to the provisions of Section 1-1947 of this title:

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,

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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,

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 Oklahoma Personal Care Program,

h. a hospice agency as such term is defined in the Oklahoma Hospice Licensing Act,

i. a Medicaid home- and community-based services waivered provider as defined in Section 1915(c) or 1915(i) of the Federal Social Security Act,

j. a staffing agency with a contracted relationship to provide staff with direct patient access to service recipients of one or more of the other employers listed in this paragraph, and

k. an independent contractor where the independent contractor has a contracted relationship to provide staff or services with direct patient access to service recipients for one or more of the employers listed in this paragraph;

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

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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;

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

7. "FBI" means the Federal Bureau of Investigation;

8. "Applicant" means an individual who applies for employment with an employer, applies to work as an independent contractor to an employer, applies to provide services to service recipients through the granting of clinical privileges by an employer, or applies to a nurse aide scholarship program;

9. "Direct patient access" means access to a service recipient of an employer, through employment, independent contract, or the granting of clinical privileges, in which the performance of duties involve, or may involve one-on-one contact with a service recipient of the employer on an ongoing basis. The term shall include access to a service recipient's property, medical information or financial information. The term does not include a volunteer unless the volunteer has duties that are equivalent to the duties of a direct patient access employee and those duties involve one-on-one contact with a service recipient of an employer, without line-of-sight supervision by employer staff;

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10. "Independent contract" means a contract entered into by an employer with an individual who provides the contracted services independently or a contract entered into by an employer with an organization or agency that employs or contracts with an individual after complying with the requirements of this section to provide the contracted services to the employer on behalf of the organization or agency;

11. "Medicare" means benefits under the Federal Medicare Program established under Title XVIII of the Social Security Act, Title 42 of the United States Code, Sections 1395 to 1395hhh;

12. "Registry screening" means a review of those registries identified in subsection D of Section 1-1947 of this title;

13. "Department" means the State Department of Health;

14. "Nurse aide scholarship program" means a nurse aide training program operated under contract with the Oklahoma Health Care Authority for the purpose of providing free training to prospective nurse aides in exchange for employment in a SoonerCare contracted facility; and

15. "Service recipient" means a patient, resident, participant, consumer, client, or member receiving services from an employer.

SECTION 2. AMENDATORY 63 O.S. 2011, Section 1-1947, is amended to read as follows:

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Section 1-1947. A. 1. The State Department of Health and the Department of Human Services shall conduct criminal history background checks on all current employees and applicants for employment of the State Department of Health and Department of Human Services whose responsibilities include working inside long-term care facilities on behalf of the State Department of Health or the Department of Human Services.

2. A criminal history background check shall be conducted on the following individuals whose responsibilities include working inside long-term care facilities:

a. any current employee of or applicant for employment with the State of Oklahoma,

b. any individual contracting with the State of Oklahoma,

c. any individual volunteering for a state-sponsored program,

d. any individual contracting with the Department of Human Services Advantage Waiver Program who enters any long-term care facility,

e. any individual providing services to the disabled or elderly in a facility or client's home, and

f. any individual employed by or volunteering for the State Long-term Care Ombudsman Program.

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3. The State Department of Health and the Department of Human Services shall not hire or continue employment of an individual that has been convicted of the crimes listed in Section 1-1950.1 of ~~Title 63 of the Oklahoma Statutes~~ this title. The criminal history background checks required by this section shall follow the requirements of Section 1-1950.1 of ~~Title 63 of the Oklahoma Statutes~~ this title.

B. The State Department of Health and the Department of Human Services shall also submit a list of all employees of the State Department of Health and the Department of Human Services who work inside long-term care facilities to the Department of Corrections. The Department of Corrections shall promptly notify the State Department of Health and the Department of Human Services of any employee who is required to register pursuant to the Sex Offenders Registration Act or the Mary Rippy Violent Crime Offenders Registration Act.

C. The State Department of Health shall conduct an employment screening prior to an offer of employment to a Health Facilities Surveyor applicant. Each applicant shall fully disclose all employment history and professional licensure history, including actions taken regarding licensure. The Department shall review the compliance history of the facilities during the time of the applicant's employment. If the applicant served as Director of

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Nursing or as an administrator during a survey that resulted in substandard quality of care and the facility failed to achieve compliance in an appropriate and timely manner, the applicant shall not be considered for employment. The Department shall also review professional licensure history of each applicant, including actions to suspend or revoke licenses by the Board of Nursing Home Administrators, Board of Nurse Licensure, or other applicable related licenses. Failure to fully disclose employment history and professional licensure actions shall constitute grounds for dismissal or prohibit employment as a surveyor.

D. Except as otherwise provided by subsection F of this section, an employer shall not employ, independently contract with, or grant clinical privileges to any individual who has direct patient access to service recipients of the employer, if one or more of the following are met:

1. If the results of a state and national criminal history records check reveal that the subject person has failed to act in conformity with all federal, state and municipal laws as applicable to his or her professional license, certification, permit or employment class, as established by the authority having jurisdiction for the subject person's professional license, certification, permit, or employment class;

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2. If the individual is currently subject to an exclusion as described under Title 42 of the United States Code, Section 1320a-7;

3. If the individual is currently the subject of a substantiated finding of neglect, abuse, verbal abuse, misappropriation of property, maltreatment, or exploitation, by any state or federal agency pursuant to an investigation conducted in accordance with Title 42 of the United States Code, Section 1395i-3(g)(1)(c) or 1396r(g)(1)(c), or Section 1-1950.7 or 1-1951 of this title;

4. If the individual is entered on the community services worker registry pursuant to Section 1025.3 of Title 56 of the Oklahoma Statutes;

5. If the individual is recorded on the Child Care Restricted Registry pursuant to Section 405.3 of Title 10 of the Oklahoma Statutes;

6. If the individual is registered pursuant to the Sex Offenders Registration Act, the Mary Rippy Violent Crime Offenders Registration Act, or registered on another state's sex offender registry; or

7. If the individual has direct patient access in an employment class not otherwise described in this subsection and is subject to a disqualifying condition identified in subsection B of Section 1-1950.1 of this title.

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E. If the results of a registry screening or criminal history check reveal that an employee or a person hired, contracted with, or granted clinical privileges on a temporary basis pursuant to subsection L of this section has been disqualified pursuant to subsection D of this section, the Department shall advise the employer or requesting agency to immediately terminate the person's employment or contract.

F. Except as otherwise provided in subsection L of this section, an employer shall not employ, independently contract with, or grant privileges to, an individual who regularly has direct patient access to service recipients of the employer until the employer conducts a registry screening and criminal history record check in compliance with subsection I of this section. This subsection and subsection D of this section shall not apply to the following:

1. An individual who is employed by, under independent contract to, or granted clinical privileges with, an employer on or before November 1, 2012. An individual who is exempt under this subsection is not limited to working within the employer with which he or she is employed, under independent contract to, or granted clinical privileges. That individual may transfer to another employer that is under the same ownership with which he or she was employed, under contract, or granted privileges. If that individual wishes to

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transfer to another employer that is not under the same ownership, he or she may do so provided that a registry screening and criminal history record check are conducted by the new employer in accordance with subsection I of this section.

a. If an individual who is exempt under this subsection is subsequently found, upon seeking transfer to another employer, ineligible for employment, independent contract, or clinical privileges, as provided in subsection D of this section, then the individual is no longer exempt and shall be terminated from employment or denied employment.

b. If an individual who is exempt under this subsection is subsequently found ineligible for employment, independent contract, or clinical privileges, as provided in subsection D of this section, based on disqualifying events occurring after November 1, 2012, then the individual is no longer exempt and shall be terminated from employment; and

2. An individual who is an independent contractor to an employer, if the services for which he or she is contracted are not directly related to the provision of services to a service recipient or if the services for which he or she is contracted allow for direct patient access to service recipients but are not performed on

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an ongoing basis. This exception includes, but is not limited to, an individual who independently contracts with the employer to provide utility, maintenance, construction, or communications services.

G. A nurse aide scholarship program shall not accept into its training program candidates seeking eligibility for listing on the nurse aide registry pursuant to 42 U.S.C. 1395i-3(e)(2)(A) or 42 U.S.C. 1396r(e)(2)(A) until the training program conducts a registry screening and criminal history record check in compliance with subsection I of this section. The candidate shall be subject to the administrative fee in paragraph 1 of subsection J of this section. A nurse aide scholarship program shall not accept into enrollment a candidate ineligible for employment pursuant to Section 1-1950.1 of this title.

H. An applicant shall provide the employer a government photo identification of the applicant and written consent for the employer to conduct a registry screening and the Bureau to conduct a state and national criminal history record check under this section. The employer shall maintain the written consent and information regarding the individual's identification in their files for audit purposes.

I. 1. Upon receipt of the written consent and identification required under subsection H of this section, an employer shall

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submit an applicant's name, any aliases, address, former states in which the applicant resided, social security number, and date of birth, through an internet portal maintained by the Department, as provided in subsection V of this section, for the purpose of conducting a check of all relevant registries established pursuant to federal and state law and regulations for any findings barring employment. If the findings of the check do not reveal any basis that would prevent the employment of the applicant pursuant to subsection D of this section, and where the applicant does not have a monitored employment record pursuant to the provisions in subsection S of this section, the Department shall authorize the collection and submission of fingerprints through an authorized collection site to the Bureau for the performance of a criminal history record check on the applicant, pursuant to Section 150.9 of Title 74 of the Oklahoma Statutes and in accordance with U.S. Public Law 111-148. Results of such search conducted through both the Bureau and FBI databases shall be returned electronically to the Department.

2. The Bureau shall retain one set of fingerprints in the Automated Fingerprint Identification System and submit the other set to the FBI for a national criminal history records search.

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3. Fingerprint images may be rejected by the Bureau or the FBI. A rejection of the fingerprints by the Bureau or the FBI shall require the applicant to be fingerprinted again.

4. The applicant shall have ten (10) calendar days, after receipt of authorization as provided in this subsection, to submit his or her fingerprints through an authorized collection site or his or her application shall be deemed withdrawn and the applicant shall be required to commence the application process from the beginning.

J. 1. The employer shall pay a fee of Nineteen Dollars ($19.00) to the Department for each applicant submitted for fingerprinting or criminal history monitoring or both fingerprinting and criminal history monitoring pursuant to subsection S of this section. The prospective employee, independent contractor or clinical privileges candidate authorized for fingerprint collection by the Department shall pay an administrative fee of Ten Dollars ($10.00) at the time of fingerprinting. Subsequent fingerprinting shall not be required of an applicant if the applicant has a monitored employment record pursuant to subsection S of this section.

2. The Department shall be responsible for screening and fingerprinting and criminal history monitoring fees for persons participating in a Medicaid program who self-direct their own care, and the applicants of such self-directed care employers.

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3. The Department shall use National Background Check grant funds, employer fees and administrative fee collections, and available Medicaid matching funds, to reimburse fingerprint collection vendors, pay administrative expenses, and reimburse the Bureau and FBI for each processed fingerprint review and automatic notification services for subsequent arrest. The Department shall reimburse fingerprint collection vendors, the Bureau, and the FBI, the applicable costs for those identified in paragraph 2 of this subsection.

4. At the consent of the current employee and request of an employer, the Department shall authorize the collection and submission of fingerprints for the purposes of conducting a criminal history record check on any person excluded from the criminal history requirements pursuant to subsection F of this section. The employer shall pay a fee of Sixty-five Dollars ($65.00) to the Department for the cost of registry screening, fingerprint collection and submission, and arrest record monitoring.

K. 1. If the criminal history record check results reveal information that precludes the Department from making a final determination of employment eligibility, the employer and applicant shall be given notice of such and the applicant shall have sixty (60) days to make any necessary corrections or additions for the Department to review.

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2. If the applicant is unable to make corrections or additions to the record within the sixty (60) days, the Department shall deny employment based on the disqualifying results and shall notify the applicant of his or her right to appeal. The notice shall include the reasons why the applicant is not eligible for employment and a statement that the applicant has a right to appeal the decision made by the Department regarding the employment eligibility. The notice shall also include information regarding where to file and describe the appellate procedures.

L. If an employer determines it necessary to employ, contract with, or grant clinical privileges to, an applicant before receiving the results of the applicant's criminal history record check under this section, the employer may conditionally employ, conditionally contract with, or grant conditional clinical privileges to, the applicant if all of the following apply:

1. The employer requests the criminal history record check under this section upon conditionally employing, contracting with, or granting clinical privileges to, the individual;

2. The individual signs a statement in writing that indicates the applicant affirms and agrees to all of the following:

a. that the applicant is not disqualified from employment, an independent contract, or clinical

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privileges, based on the disqualifying criteria defined in subsection D of this section,

b. that the applicant agrees that, if the information in the registry screening and criminal history record check conducted under this section does not confirm the individual's statements under subparagraph a of this paragraph, his or her employment, independent contract, or clinical privileges shall be terminated by the employer as required under subsection D of this section unless and until the individual appeals and can provide that the information is incorrect, and

c. that the applicant understands that the conditions described in subparagraphs a and b of this paragraph may result in the termination of his or her employment, independent contract, or clinical privileges, and that those conditions are good cause for termination; and

3. The period of provisional employment shall not exceed sixty (60) days pending the completion of the required background check. During this time the employee shall be subject to direct on-site supervision. The sixty-day time period may only be extended for those employees who are appealing the results of the background

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check. The time period shall only be extended for the duration of the appeal.

M. The Department shall develop and distribute a model form for the statement required under paragraph 2 of subsection L of this section. The Department shall make the model form available to health facilities or agencies subject to this section upon request at no charge.

N. If an individual is employed as a conditional employee, has a conditional independent contract, or is granted conditional clinical privileges under subsection L of this section, and the report described in subsection I of this section does not confirm the individual's statement under subparagraph a of paragraph 2 of subsection L of this section, the employer shall terminate the individual's employment, independent contract, or clinical privileges, as required by subsection E of this section.

O. An individual who knowingly provides false information regarding his or her identity, criminal convictions, or substantiated findings on a statement described in subparagraph a of paragraph 2 of subsection L of this section is guilty of a misdemeanor punishable by a fine of not less than One Hundred Dollars ($100.00) nor more than Three Hundred Dollars ($300.00), imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

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P. The Department shall use criminal history record information obtained under subsection I of the section only for the purpose of evaluating an applicant's qualifications for employment, an independent contract, or clinical privileges, in the position for which he or she has applied and for the purposes of subsections H and N of this section. The Department shall not disclose criminal history record information. An individual who knowingly uses or disseminates the criminal history record information obtained under subsection I of this section in violation of this subsection is guilty of a misdemeanor punishable by imprisonment for not more than thirty (30) days or a fine of not more than Five Hundred Dollars ($500.00), or both. Except for a knowing or intentional release of false information, the Department or employer has no liability in connection with a criminal history record check conducted under this section.

Q. As a condition of continued employment, each employee, independent contractor, or individual granted clinical privileges shall agree in writing to report to the employer immediately upon being arraigned or indicted for one or more of the criminal offenses listed in subsection D of this section, upon being convicted of, or pleading guilty or nolo contendere to, one or more of the criminal offenses listed in subsection D of this section, or upon being the subject of a substantiated finding on a relevant registry as

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described in subsection D of this section. Reporting of an arraignment under this subsection may be cause for leave without pay, placement under direct supervision, restriction from direct patient access, termination, or denial of employment.

R. An employer convicted for knowingly and willfully failing to conduct the criminal history checks as required under this section may be found guilty of a misdemeanor punishable by a fine of not less than One Thousand Dollars ($1,000.00) nor more than Three Thousand Dollars ($3,000.00), imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

S. The Department shall establish a database to store the records of an employer's prospective and current employees, the results of the screening and criminal arrest records search, and an identifier issued by the Bureau for the purposes of receiving an automatic notification to the Department if and when a subsequent criminal arrest record submitted into the system matches a set of fingerprints previously submitted in accordance with this section. Upon such notification, the Bureau shall immediately notify the Department and the Department shall immediately notify the respective employee and employer with whom the individual is employed. Information in the database established under this subsection is confidential, is not subject to disclosure under the

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Oklahoma Open Records Act, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes. Reporting of an arraignment under this subsection may be cause for leave without pay, placement under direct supervision, restriction from direct patient access, termination, or denial of employment.

T. 1. Any individual who has been disqualified from or denied employment by an employer pursuant to this section may file an appeal with the Department within thirty (30) days of the receipt of the notice of disqualification, if the applicant believes that the criminal history report is inaccurate.

2. The appeal shall be conducted as an individual proceeding pursuant to the Administrative Procedures Act.

U. An employer who has acted in good faith to comply with the requirements of this section of law shall be immune from liability in carrying on the provisions of this section.

V. The Department and the Bureau shall maintain an electronic web-based system to assist employers, and nurse aide scholarship programs, required to check relevant registries and conduct criminal history record checks of its prospective students, employees, independent contractors, and those to whom the employer would grant clinical privileges. The employer shall maintain the status of the employment, contract, or privileges in the system, and the Department shall provide for an automated notice to employers for

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those employees, independent contractors, and those granted clinical privileges, who, since the initial check, have been convicted of a disqualifying offense or have been the subject of a substantiated finding on a relevant registry.

W. The Department is authorized to obtain any criminal history records maintained by the Bureau and FBI which the Department is required or authorized to request by the provisions of this section.

X. There is hereby created in the State Treasury a revolving fund for the Department to be designated the "Oklahoma National Background Check Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Department from employers and administrative fees collected pursuant to this section. Screening and administrative fees collected pursuant to this section shall be deposited into the fund. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Department for the following purposes:

1. Obtaining available Medicaid funds for screening, fingerprinting, the cost of criminal history records obtained from the Bureau and FBI, and program administration;

2. Reimbursement of fingerprint collection vendors;

3. Reimbursement to the Bureau and FBI for criminal history records; and

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4. Administrative and other applicable expenses of the Department related to the background check program.

Y. The Department is authorized to phase in implementation of subsections D through G of this section by category of employer. The State Board of Health shall promulgate rules prescribing effective dates and procedures for the implementation of a national criminal history record check for the employers and nurse aide scholarship programs defined in Section 1-1945 of this title. Said dates may be staggered to facilitate implementation of the requirements of this section.

SECTION 3. AMENDATORY 63 O.S. 2011, Section 1-1950.1, is amended to read as follows:

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

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

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

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

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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; and

5. "Completion of the sentence" means the last day of the entire term of the incarceration imposed by the sentence including any term that is deferred, suspended or subject to parole.

B. ~~1. Except as otherwise provided by subsection C of this section, before~~ Before any employer makes an offer to employ or to contract with a nurse aide ~~or other person~~ to provide nursing care, health-related services or supportive assistance to any individual ~~except as provided by paragraph 4 of this subsection~~, the employer shall provide for a criminal history background check to be made on the nurse aide ~~or other person~~ pursuant to the provisions of ~~this section~~ the Long-term Care Security Act. If the employer is a facility, home or institution which is part of a larger complex of buildings, the requirement of a criminal history background check shall apply only to an offer of employment or contract made to a person who will work primarily in the immediate boundaries of the facility, home or institution.

~~2. Except as otherwise specified by subsection D of this section, an employer is authorized to obtain any criminal history background records maintained by the Oklahoma State Bureau of~~

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~~Investigation which the employer is required or authorized to request by the provisions of this section.~~

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

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

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

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

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

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

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

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

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

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

~~i. an occupational therapist licensed pursuant to the Occupational Therapy Practice Act, or~~

~~j. an individual who is to be employed by a nursing service conducted by and for the adherents of any religious denomination, the tenets of which include reliance on spiritual means through prayer alone for healing.~~

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

~~C. 1. An employer may make an offer of temporary employment to a nurse aide or other person pending the results of the criminal history background check on the person. The employer in such instance shall provide to the Bureau the name and relevant information relating to the person within seventy-two (72) hours after the date the person accepts temporary employment. The~~

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~~employer shall not hire or contract with a person on a permanent basis until the results of the criminal history background check are received.~~

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

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

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

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

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

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

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

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

~~E. Every employer who is subject to the provisions of this section shall inform each applicant for employment, or each prospective contract provider, as applicable, that the employer is required to obtain a criminal history background record before making an offer of permanent employment or contract to a nurse aide or other person described in subsection B of this section~~ Where the provisions of the Long-term Care Security Act pertaining to registry screenings and national criminal history record check are not in effect pending an effective date established in rulemaking, an employer is authorized to obtain any criminal history background records maintained by the Bureau pursuant to the following:

1. The employer shall request the Bureau to conduct a criminal history background check on the nurse aide and shall provide to the Bureau any relevant information required by the Bureau to conduct the check. The employer shall pay a fee of Fifteen Dollars ($15.00) to the Bureau for each criminal history background check that is conducted pursuant to such a request;

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

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

4. Every employer while subject to the provisions of this subsection shall inform each applicant for employment, or each prospective contract provider, as applicable, that the employer is required to obtain a criminal history background record before making an offer of permanent employment or contract to a nurse aide.

~~F.~~ C. 1. If the results of a criminal history background check reveal that the subject person has been convicted of, pled guilty or no contest to, or received a deferred sentence for, a felony or misdemeanor offense for any of the following offenses in any state

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or federal jurisdiction, the employer shall not hire or contract with the person:

a. ~~assault, battery, or assault and battery with a dangerous weapon,~~

~~b.~~ ~~aggravated assault and battery,~~

~~c.~~ ~~murder or attempted murder,~~

~~d.~~ ~~manslaughter, except involuntary manslaughter,~~

~~e.~~ ~~rape, incest or sodomy,~~

~~f.~~ ~~indecent exposure and indecent exhibition,~~

~~g.~~ ~~pandering,~~

~~h.~~ ~~child abuse,~~

~~i.~~ abuse, neglect or financial exploitation of any person entrusted to the care or possession of such person,

~~j.~~ ~~burglary in the first or second degree,~~

~~k.~~ ~~robbery in the first or second degree,~~

~~l.~~ ~~robbery or attempted robbery with a dangerous weapon, or imitation firearm,~~

~~m.~~ ~~arson in the first or second degree,~~

~~n.~~ ~~unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act,~~

~~o.~~ ~~grand larceny, or~~

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

b. rape, incest or sodomy,

c. child abuse,

d. murder or attempted murder,

e. manslaughter,

f. kidnapping,

g. aggravated assault and battery,

h. assault and battery with a dangerous weapon, or

i. arson in the first degree.

2. ~~If the results of a criminal history background check reveal that an employee or a person hired on a temporary basis pursuant to subsection C of this section or any other person who is an employee or contract provider has been convicted of any of the offenses listed in paragraph 1 of this subsection, the employer shall immediately terminate the person's employment or contract. The provisions of this paragraph shall not apply to an employee or contract provider of an employer who has completed the requirements for certification and placement on the nurse aide registry and who has been continuously employed by the employer prior to January 1, 1992~~ If less than seven (7) years have elapsed since the completion of sentence, and the results of a criminal history check reveal that the subject person has been convicted of, or pled guilty or no

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contest to, a felony or misdemeanor offense for any of the following offenses, in any state or federal jurisdiction, the employer shall not hire or contract with the person:

a. assault,

b. battery,

c. indecent exposure and indecent exhibition, except where such offense disqualifies the applicant as a registered sex offender,

d. pandering,

e. burglary in the first or second degree,

f. robbery in the first or second degree,

g. robbery or attempted robbery with a dangerous weapon, or imitation firearm,

h. arson in the second degree,

i. unlawful manufacture, distribution, prescription, or dispensing of a Schedule I through V drug as defined by the Uniform Controlled Dangerous Substances Act,

j. grand larceny, or

k. petit larceny or shoplifting.

~~C.~~ D. An employer shall not employ or continue employing a person addicted to any Schedule I through V drug as specified by the Uniform Controlled Dangerous Substances Act unless the person

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produces evidence that the person has successfully completed a drug rehabilitation program.

~~H.~~ E. All ~~criminal~~ employment eligibility determination records received by the employer pursuant to this section are confidential and are for the exclusive use of the State Department of Health and the employer which requested the information. Except on court order or with the written consent of the person being investigated, the records shall not be released or otherwise disclosed to any other person or agency. These records shall be destroyed after one (1) year from the end of employment of the person to whom such records relate.

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

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

SECTION 4. AMENDATORY 63 O.S. 2011, Section 1-1950.4, is amended to read:

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Section 1-1950.4 A. 1. The State Department of Health, in conjunction with the Office of the State Long-term Care Ombudsman of the Department of Human Services, shall develop a uniform employment application to be used in the hiring of nurse aide staff by a nursing facility or a specialized facility as such terms are defined in the Nursing Home Care Act, a residential care home, as such term is defined by the Residential Care Act, an assisted living center as such term is defined by the Continuum of Care and Assisted Living Act, a continuum of care facility as defined by the Continuum of Care and Assisted Living Act, a hospice inpatient facility or program providing hospice services as such terms are defined by the Hospice Licensing Act, an adult day care center as such term is defined by the Adult Day Care Act, and a home care agency as defined by the Home Care Act. Such uniform application shall be used as the only application for employment of nurse aides in such facilities on and after January 1, 2001.

2. Nothing in this section shall prohibit the State Department of Health or any other state agency from requiring applicants for any position in the classified service to be certified by the state using the State of Oklahoma Employment Application.

B. The uniform employment application shall be designed to gather all pertinent information for entry into the nurse aide

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registry maintained by the State Department of Health. The uniform application shall also contain:

1. A signature from the applicant to confirm or deny any previous felony conviction;

2. A release statement for the applicant to sign giving the State Department of Health and the Oklahoma State Bureau of Investigation the authority to proceed with the state or national criminal history record checks; and

3. Such other information deemed necessary by the Department.

C. The Department shall provide implementation training on the use of the uniform employment application.

SECTION 5. AMENDATORY 63 O.S. 2011, Section 1-1950.8, is amended to read as follows:

Section 1-1950.8 A. 1. ~~Except as otherwise provided in subsection C of this section, before~~ Before any nursing facility makes an offer to employ a nontechnical services worker applicant subject to subsection A of Section ~~3~~ 1-1950.7 of this ~~act~~ title on or after the effective date of Sections ~~2~~ 1-1950.6 through ~~5~~ 1-1950.9 of this ~~act~~ title, to provide nontechnical services, the nursing facility shall:

a. provide for~~, prior to a check with the State Department of Health,~~ a criminal history records search to be conducted upon the nontechnical services

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worker applicant pursuant to the provisions of ~~this section~~ the Long-term Care Security Act, and

b. check with the Department to determine whether the name of the applicant seeking employment appears on the nontechnical services worker abuse registry created pursuant to the provisions of Section ~~3~~ 1-1950.7 of this ~~act~~ title. If the name of the applicant seeking employment with the nursing facility is listed on the abuse registry as having a final Department investigative finding or an Administrative Law Judge finding pursuant to the requirements of Section ~~3~~ 1-1950.7 of this ~~act~~ title, and the Department has allowed for notice and opportunity for due process for such applicant, the nursing facility shall not hire the applicant.

2. ~~A nursing facility is authorized to obtain records of any criminal conviction, guilty plea, or plea of nolo contendere maintained by the Oklahoma State Bureau of Investigation which the nursing facility is required or authorized to request pursuant to the provisions of this section.~~

~~3. The nursing facility shall request the Bureau to conduct a criminal history records search on a nontechnical services worker desiring employment with the nursing facility and shall provide to~~

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~~the Bureau any relevant information required by the Bureau to conduct the search. The nursing facility shall pay a reasonable fee to the Bureau for each criminal history records search that is conducted pursuant to such a request. The fee shall be determined by the Bureau~~ Where the provisions of the Long-term Care Security Act pertaining to registry screenings and national criminal history record checks are not in effect pending an effective date in rulemaking, an employer is authorized to obtain any criminal history background records maintained by the Oklahoma State Bureau of Investigation pursuant to the following:

a. the employer shall request the Bureau to conduct a criminal history background check on the nontechnical services worker and shall provide to the Bureau any relevant information required by the Bureau to conduct the check. The employer shall pay a fee of Fifteen Dollars ($15.00) to the Bureau for each criminal history background check that is conducted pursuant to such a request,

b. an employers may make an offer of temporary employment to a nontechnical services worker pending the results of the criminal history background check. The employer in such instance shall provide to the Bureau the name and relevant information relating to the

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person within seventy-two (72) hours after the date the person accepts temporary employment. The employer shall not hire or contract with the nontechnical services worker on a permanent basis until the results of the criminal history background check are received,

c. an employer may accept a criminal history background report less than one (1) year old of a nontechnical services worker to whom such employer makes an offer of employment or employment contract. The report shall be obtained from the previous employer or contractor of such person and shall only be obtained upon the written consent of such person, and

d. every employer while subject to the provisions of this subsection shall inform each applicant for employment, or each prospective contract provider, as applicable, that the employer is required to obtain a criminal history background record before making an offer of permanent employment or contract to a nontechnical services worker.

B. ~~At the request of the nursing facility, the Bureau shall conduct a criminal history records search on any applicant desiring employment pursuant to the provisions of subsection A of this section or any nontechnical services worker employed by the nursing~~

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~~facility at any time during the period of employment of such worker with the nursing facility.~~

~~C. A nursing facility may make an offer of temporary employment to a nontechnical services worker pending the results of such criminal history records search and the abuse registry review on the applicant. The nursing facility in such instance shall provide to the Bureau the name and relevant information relating to the applicant within seventy-two (72) hours after the date the applicant accepts temporary employment. The nursing facility shall not hire an applicant as a nontechnical services worker on a permanent basis until the results of the criminal history records search and the abuse registry review are received.~~

~~D. Within five (5) days of the receipt of a request to conduct a criminal history records search, the Bureau shall complete the criminal history records search and report the results of the search to the requesting nursing facility.~~

~~E.~~ Every nursing facility shall inform each nontechnical services worker applicant for employment of the requirement to obtain a criminal check and an abuse registry review before making an offer of permanent employment with a nontechnical services worker applicant.

~~F.~~ C. A nursing facility shall not hire or contract with and shall immediately terminate the employment, contract or volunteer

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arrangement of any applicant, contract worker or employee for whom the results of a criminal history records search from any jurisdiction reveals that such person has ~~been convicted of, or pled guilty or nolo contendere to:~~

~~1. Assault, battery, or assault and battery with a dangerous weapon;~~

~~2. Aggravated assault and battery;~~

~~3. Murder or attempted murder;~~

~~4. Manslaughter, except involuntary manslaughter;~~

~~5. Rape, incest or sodomy;~~

~~6. Abuse, neglect or financial exploitation of any person entrusted to his or her care or possession;~~

~~7. Burglary in the first or second degree;~~

~~8. Robbery in the first or second degree;~~

~~9. Robbery or attempted robbery with a dangerous weapon, or imitation firearm;~~

~~10. Arson in the first or second degree;~~

~~11. Unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act;~~

~~12. Grand larceny; or~~

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~~13. Petit larceny or shoplifting within the past seven (7) years~~ a disqualifying criminal offense listed in subsection C of Section 1-1950.1 of this title.

~~C.~~ D. All ~~criminal history~~ employment eligibility determination records received by the nursing facility are for the exclusive use of the State Department of Health and the nursing facility that requested the information. Except as otherwise provided by Sections ~~2~~ 1-1950.6 through ~~5~~ 1-1950.9 of this ~~act~~ title or upon court order or with the written consent of the person being investigated, the ~~criminal history~~ employment eligibility determination records shall not be released or otherwise disclosed to any other person or agency.

~~H.~~ E. Any person releasing or disclosing any information in violation of this section, upon conviction thereof, shall be guilty of a misdemeanor.

~~I.~~ F. As part of any inspections required by law, the Department shall review the employment files of the nursing facility required to conduct a criminal history records search to ensure compliance with the provisions of this section.

SECTION 6. AMENDATORY 63 O.S. 2011, Section 1-1951, is amended to read as follows:

Section 1-1951. A. The State Department of Health shall have the power and duty to:

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1. Issue certificates of training and competency for nurse aides;

2. Approve training and competency programs including, but not limited to, education-based programs and employer-based programs;

3. Determine curricula and standards for training and competency programs. The Department shall require such training to include a minimum of ten (10) hours of training in the care of Alzheimer's patients;

4. Establish and maintain a registry for certified nurse aides and for nurse aide trainees;

5. Establish categories and standards for nurse aide certification and registration, including feeding assistants as defined in 42 CFR Parts 483 and 488; and

6. Exercise all incidental powers as necessary and proper to implement and enforce the provisions of this section.

B. The State Board of Health shall promulgate rules to implement the provisions of this section and shall have power to assess fees.

1. Each person certified as a nurse aide pursuant to the provisions of this section shall be required to pay certification and recertification fees in amounts to be determined by the State Board of Health, not to exceed Fifteen Dollars ($15.00).

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2. In addition to the certification and recertification fees, the State Board of Health may impose fees for training or education programs conducted or approved by the Board.

3. All revenues collected as a result of fees authorized in this section and imposed by the Board shall be deposited into the Public Health Special Fund.

C. Only a person who has qualified as a certified nurse aide and who holds a valid current nurse aide certificate for use in this state shall have the right and privilege of using the title Certified Nurse Aide and to use the abbreviation CNA after the name of such person. Any person who violates the provisions of this section shall be subject to a civil monetary penalty to be assessed by the Department.

D. 1. The State Department of Health shall establish and maintain a certified nurse aide, nurse aide trainee and feeding assistant registry that:

a. is sufficiently accessible to promptly meet the needs of the public and employers, and

b. provides a process for notification and investigation of alleged abuse, exploitation or neglect of residents of a facility or home, clients of an agency or center, or of misappropriation of resident or client property.

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2. The registry shall contain information as to whether a nurse aide has:

a. successfully completed a certified nurse aide training and competency examination,

b. met all the requirements for certification, or

c. received a waiver from the Board.

3. ~~a.~~ The registry shall include, but not be limited to, the following information on each certified nurse aide or nurse aide trainee:

~~(1)~~ a. the full name of the individual,

~~(2)~~ b. information necessary to identify each individual,

~~(3)~~ c. the date the individual became eligible for placement in the registry,

~~(4)~~ d. information on any finding of the Department of abuse, neglect or exploitation by the certified nurse aide or nurse aide trainee, including:

~~(a)~~ (1) documentation of the Department's investigation, including the nature of the allegation and the evidence that led the Department to confirm the allegation,

~~(b)~~ (2) the date of the hearing, if requested by the certified nurse aide or nurse aide trainee, and

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~~(c)~~ (3) statement by the individual disputing the finding if the individual chooses to make one.

4. The Department shall include the information specified in ~~division (4) of~~ subparagraph ~~a~~ d of paragraph 3 of this subsection in the registry within ten (10) working days of the substantiating finding and it shall remain in the registry, unless:

a. it has been determined by an administrative law judge, a district court or an appeal court that the finding was in error, or

b. the Board is notified of the death of the certified nurse aide or nurse aide trainee.

5. Upon receipt of an allegation of abuse, exploitation or neglect of a resident or client, or an allegation of misappropriation of resident or client property by a certified nurse aide or nurse aide trainee, the Department shall place a pending notation in the registry until a final determination has been made. If the investigation, or administrative hearing held to determine whether the certified nurse aide or nurse aide trainee is in violation of the law or rules promulgated pursuant thereto, reveals that the abuse, exploitation or neglect, or misappropriation of resident or client property was unsubstantiated, the pending notation shall be removed within twenty-four (24) hours of receipt of notice by the Department.

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6. The Department shall, after notice to the individuals involved and a reasonable opportunity for a hearing, make a finding as to the accuracy of the allegations.

7. If the Department after notice and opportunity for hearing determines with clear and convincing evidence that abuse, neglect or exploitation, or misappropriation of resident or client property has occurred and the alleged perpetrator is the person who committed the prohibited act, notice of the findings shall be sent to the nurse aide and to the district attorney for the county where the abuse, neglect or exploitation, or misappropriation of resident or client property occurred and to the Medicaid Fraud Control Unit of the Attorney General's Office. Notice of ineligibility to work as a nurse aide in a long-term care facility, a residential care facility, assisted living facility, day care facility, or any entity that requires certification of nurse aides, and notice of any further appeal rights shall also be sent to the nurse aide.

8. The Department shall require that each facility check the nurse aide registry before hiring a person to work as a nurse aide. If the registry indicates that an individual has been found, as a result of a hearing, to be personally responsible for abuse, neglect or exploitation, that individual shall not be hired by the facility.

9. If the state finds that any other individual employed by the facility has neglected, abused, misappropriated property or

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exploited in a facility, the Department shall notify the appropriate licensing authority and the district attorney for the county where the abuse, neglect or exploitation, or misappropriation of resident or client property occurred.

10. Upon a written request by a certified nurse aide or nurse aide trainee, the Board shall provide within twenty (20) working days all information on the record of the certified nurse aide or nurse aide trainee when a finding of abuse, exploited or neglect is confirmed and placed in the registry.

11. Upon request and except for the names of residents and clients, the Department shall disclose all of the information relating to the confirmed determination of abuse, exploitation and neglect by the certified nurse aide or nurse aide trainee to the person requesting such information, and may disclose additional information the Department determines necessary.

12. A person who has acted in good faith to comply with state reporting requirements and this section of law shall be immune from liability for reporting allegations of abuse, neglect or exploitation.

E. Each nurse aide trainee shall wear a badge which clearly identifies the person as a nurse aide trainee. Such badge shall be furnished by the facility employing the trainee. The badge shall be

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nontransferable and shall include the first and last name of the trainee.

F. 1. For purposes of this section, "feeding assistant" means an individual who is paid to feed residents by a facility or who is used under an arrangement with another agency or organization and meets the requirements cited in 42 CFR Parts 483 and 488.

2. Each facility that employs or contracts employment of a feeding assistant shall maintain a record of all individuals, used by the facility as feeding assistants, who have successfully completed a training course approved by the state for paid feeding assistants.

G. An individual shall not be eligible for certification as a nurse aide for the period the individual satisfied one or more of the disqualifying criteria found in subsection D of Section 1-1947 of this title. A nurse aide certified on or after November 1, 2012, and subsequently found to satisfy one or more of the disqualifying criteria found in subsection D of Section 1-1947 of this title shall, for the period they satisfy the criteria, be subject to revocation or nonrenewal of certification after reasonable opportunity for notice and hearing pursuant to the Administrative Procedures Act.

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SECTION 7. This act shall become effective November 1, 2012.

COMMITTEE REPORT BY: COMMITTEE ON LONG TERM CARE AND SENIOR SERVICES, dated 02-08-12 - DO PASS, As Amended.

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