

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 177

By: Crain

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5
6 AS INTRODUCED

7 An Act relating to the employment of community
8 services providers; amending 56 O.S. 2001, Section
9 1025.2, as last amended by Section 2, Chapter 71,
10 O.S.L. 2008 (56 O.S. Supp. 2010, Section 1025.2),
which relates to community services providers;
11 permitting certain waiver; and providing an effective
12 date.

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

14 SECTION 1. AMENDATORY 56 O.S. 2001, Section 1025.2, as
15 last amended by Section 2, Chapter 71, O.S.L. 2008 (56 O.S. Supp.
16 2010, Section 1025.2), is amended to read as follows:

17 Section 1025.2 A. 1. Except as otherwise provided by
18 subsection C of this section, before any community services provider
19 or Medicaid personal care services provider makes an offer to employ
20 or to contract with a community services worker applicant or a
21 Medicaid personal care assistant applicant to provide health-related
22 services, training, or supportive assistance to a person with a
23 developmental disability, or personal care services to a person who
24 receives the services of the state Medicaid personal care program,

1 the community services provider or Medicaid personal care services
2 provider shall:

- 3 a. provide, prior to a check with the Department of Human
4 Services, for a criminal history records search to be
5 made on the community services worker applicant or
6 Medicaid personal care assistant or contractor
7 pursuant to the provisions of this section, and
- 8 b. check with the Department of Human Services to
9 determine if the name of the applicant seeking
10 employment or contract has been entered on the
11 community services worker registry created pursuant to
12 Section 1025.3 of this title. Prior to a decision by
13 the Department to enter the name of a community
14 services worker or a Medicaid personal care assistant
15 on such registry, the Department shall allow for
16 notice and opportunity for due process for such
17 community services worker or Medicaid personal care
18 assistant against whom a final investigative finding
19 by the Department of Human Services of maltreatment of
20 an individual has been made. If the name of the
21 applicant seeking employment or a contract with the
22 community services provider or Medicaid personal care
23 assistant is listed on the registry as having a
24 finding by an Administrative Law Judge pursuant to the

1 requirements of Section 1025.3 of this title, and the
2 Department has allowed for notice and opportunity for
3 due process for such applicant, the provider shall not
4 hire the applicant.

5 2. If the Department of Human Services contracts directly with
6 a Medicaid personal care assistant, the Department shall follow the
7 screening procedures required by this section for Medicaid personal
8 care services providers.

9 3. If the Oklahoma Health Care Authority contracts directly
10 with a specialized foster care provider or habilitation training
11 specialist services provider or a homemaker services provider, the
12 Department shall follow the screening procedures required by this
13 section for community services providers.

14 4. Community services providers and Medicaid personal care
15 services providers are authorized to obtain records of any criminal
16 conviction, guilty plea, or plea of nolo contendere maintained by
17 the Oklahoma State Bureau of Investigation which the employer is
18 required or authorized to request pursuant to the provisions of this
19 section.

20 5. A Medicaid personal care services provider shall request the
21 Bureau to conduct a criminal history records search on Medicaid
22 personal care assistants pursuant to the provisions of Section 1-
23 1950.1 of Title 63 of the Oklahoma Statutes.

1 6. The community services provider shall request the Bureau to
2 conduct a criminal history records search on a community services
3 worker desiring employment or a contract with the provider and shall
4 provide to the Bureau any relevant information required by the
5 Bureau to conduct the search. The community services provider shall
6 pay a reasonable fee to the Bureau for each criminal history records
7 search that is conducted pursuant to such a request. Such fee shall
8 be determined by the Oklahoma State Bureau of Investigation.

9 7. The requirement of a criminal history records search shall
10 not apply to an offer of employment made to:

- 11 a. 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 b. a registered nurse or practical nurse licensed
15 pursuant to the Oklahoma Nursing Practice Act,
- 16 c. a physical therapist registered pursuant to the
17 Physical Therapy Practice Act,
- 18 d. a physical therapist assistant licensed pursuant to
19 the Physical Therapy Practice Act,
- 20 e. a social worker licensed pursuant to the provisions of
21 the Social Worker's Licensing Act,
- 22 f. a speech pathologist or audiologist licensed pursuant
23 to the Speech Pathology and Audiology Licensing Act,

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- 1 g. a dietitian licensed pursuant to the provisions of the
- 2 Licensed Dietitian Act,
- 3 h. an occupational therapist licensed pursuant to the
- 4 Occupational Therapy Practice Act, or
- 5 i. a respiratory care practitioner licensed pursuant to
- 6 the Respiratory Care Practice Act.

7 B. At the request of the community services provider, the
8 Bureau shall conduct a criminal history records search on any
9 applicant desiring employment or a contract pursuant to subsection A
10 of this section or any worker employed by the community services
11 provider, including any of the workers specified in paragraph 6 of
12 subsection A of this section, at any time during the period of
13 employment of such worker with the provider.

14 C. A community services provider may make an offer of temporary
15 employment to a community services worker pending the results of
16 such criminal history records search and the registry review on the
17 applicant. The community services provider in such instance shall
18 provide to the Bureau the name and relevant information relating to
19 the applicant within seventy-two (72) hours after the date the
20 applicant accepts temporary employment. Temporary employment shall
21 not extend longer than the time necessary to receive the results of
22 the criminal history records search and registry review, not to
23 exceed thirty (30) days. The community services provider shall not
24 hire or contract with an applicant as a community services worker on

1 a permanent basis until the results of the criminal history records
2 search and the registry review are received.

3 D. Within five (5) days of receipt of a request to conduct a
4 criminal history records search, the Bureau shall complete the
5 criminal history records search and report the results of the search
6 to the requesting community services provider.

7 E. Every community services provider and Medicaid personal care
8 services provider shall inform each applicant for employment, or
9 each prospective contract worker, as applicable, that the community
10 services provider or Medicaid personal care services provider is
11 required to obtain a criminal history records search and a registry
12 review before making an offer of permanent employment or a contract
13 with the community services worker or Medicaid personal care
14 assistant or applicant described in subsection A of this section.

15 F. 1. If the results of any criminal history records search
16 from any jurisdiction reveals that the subject worker or applicant
17 has been convicted, or pled guilty or nolo contendere to a felony or
18 to a misdemeanor assault and battery, the employer shall not hire or
19 contract with the applicant, but shall immediately terminate the
20 community services worker's employment, contract, or volunteer
21 arrangement, subject to the provisions of paragraph 2 of this
22 subsection.

23 2. The community services provider may request, in writing, a
24 waiver of the provisions of paragraph 1 of this subsection from the

1 Director of the Department of Human Services, or a designee of the
2 Director. The Director or a designee of the Director may waive the
3 provisions based upon standards promulgated by the Commission for
4 Human Services after concurrence by the Chief Executive Officer of
5 the Oklahoma Health Care Authority as the State Medicaid Agency. No
6 waiver shall be granted for offenses resulting in a felony
7 conviction or plea of guilty or nolo contendere to a felony that
8 occurred less than five (5) calendar years prior to the date of
9 request; provided, however, that a waiver may be granted for persons
10 who were convicted of an offense related to drugs or alcohol that
11 occurred less than five (5) calendar years prior to the date of
12 request if the person is a graduate of a drug or alcohol program
13 certified by the Department of Mental Health and Substance Abuse
14 Services. In no case shall a waiver be granted for employment of a
15 community services worker who has been convicted of, or pled guilty
16 or nolo contendere to, a felony count of aggravated assault and
17 battery, homicide, murder, attempted murder, rape, incest, sodomy,
18 or abuse, neglect, or financial exploitation of any person entrusted
19 to the worker's care.

20 G. All criminal history records received by the community
21 services provider or Medicaid personal care services provider are
22 for the exclusive use of the Department of Human Services, the
23 Oklahoma Health Care Authority and the community services provider
24 or Medicaid personal care services provider that requested the

1 information. Except as otherwise provided by this chapter or upon
2 court order or with the written consent of the person being
3 investigated, the criminal history records shall not be released or
4 otherwise disclosed to any other person or agency.

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

8 I. As part of any inspections required by law, the Department
9 of Human Services shall review the employment files of the community
10 services provider or Medicaid personal care services provider
11 required to conduct a criminal history records search to ensure such
12 provider is in compliance with the provisions of this section.

13 J. The Department of Human Services shall disclose all registry
14 information, all criminal records gathered and any inspections
15 conducted as a result of this section to the Oklahoma Health Care
16 Authority upon the request of the Oklahoma Health Care Authority.

17 SECTION 2. This act shall become effective November 1, 2011.

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