ENGROSSED SENATE
BILL NO. 115 By: Simpson of the Senate

and

Hardin of the House

An Act relating to medical foster homes; amending 63 O.S. 2011, Section 1-1950.1, as last amended by Section 5, Chapter 379, O.S.L. 2013 (63 O.S. Supp. 2014, Section 1-1950.1), which relates to definitions; broadening certain definition to include certain facilities; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-1950.1, as last amended by Section 5, Chapter 379, O.S.L. 2013 (63 O.S. Supp. 2014, 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;

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,

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, ~~and~~

h. any facility operated by the Oklahoma Department of Veterans Affairs, and

i. any facility approved and annually reviewed by the United States Department of Veterans Affairs as a medical foster home in which care is provided exclusively to three or fewer veterans;

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

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. Before any employer makes an offer to employ or to contract with a nurse aide to provide nursing care, health-related services or supportive assistance to any individual, the employer shall provide for a criminal history background check to be made on the nurse aide pursuant to the provisions of 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.

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;

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.

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

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

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 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 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.

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

E. All 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.

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 determination to ensure such facilities, homes or institutions are in compliance with the provisions of this section.

SECTION 2. This act shall become effective November 1, 2015.

Passed the Senate the 24th day of February, 2015.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2015.

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Presiding Officer of the House
of Representatives