

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SENATE BILL 115

By: Simpson

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5  
6 AS INTRODUCED

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

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

13 SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-1950.1, as  
14 last amended by Section 5, Chapter 379, O.S.L. 2013 (63 O.S. Supp.  
15 2014, Section 1-1950.1), is amended to read as follows:

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

17 1. "Nurse aide" means any person who provides, for  
18 compensation, nursing care or health-related services to residents  
19 in a nursing facility, a specialized facility, a residential care  
20 home, continuum of care facility, assisted living center or an adult  
21 day care center and who is not a licensed health professional. Such  
22 term also means any person who provides such services to individuals  
23 in their own homes as an employee or contract provider of a home  
24

1 health or home care agency, or as a contract provider of the  
2 Medicaid State Plan Personal Care Program;

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

- 6 a. a nursing facility or specialized facility as such  
7 terms are defined in the Nursing Home Care Act,
- 8 b. a residential care home as such term is defined by the  
9 Residential Care Act,
- 10 c. an adult day care center as such term is defined in  
11 the Adult Day Care Act,
- 12 d. an assisted living center as such term is defined by  
13 the Continuum of Care and Assisted Living Act,
- 14 e. a continuum of care facility as such term is defined  
15 by the Continuum of Care and Assisted Living Act,
- 16 f. a home health or home care agency,
- 17 g. the Department of Human Services, in its capacity as  
18 an operator of any hospital or health care institution  
19 or as a contractor with providers under the Medicaid  
20 State Plan Personal Care Program, ~~and~~
- 21 h. any facility operated by the Oklahoma Department of  
22 Veterans Affairs, and
- 23 i. any facility approved and annually reviewed by the  
24 United States Department of Veterans Affairs as a

1                   medical foster home in which care is provided  
2                   exclusively to three or fewer veterans;

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

10           4. "Bureau" means the Oklahoma State Bureau of Investigation;  
11 and

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

15           B. Before any employer makes an offer to employ or to contract  
16 with a nurse aide to provide nursing care, health-related services  
17 or supportive assistance to any individual, the employer shall  
18 provide for a criminal history background check to be made on the  
19 nurse aide pursuant to the provisions of the Long-Term Care Security  
20 Act. If the employer is a facility, home or institution which is  
21 part of a larger complex of buildings, the requirement of a criminal  
22 history background check shall apply only to an offer of employment  
23 or contract made to a person who will work primarily in the  
24 immediate boundaries of the facility, home or institution.

1           Where the provisions of the Long-Term Care Security Act  
2           pertaining to registry screenings and national criminal history  
3           record check are not in effect pending an effective date established  
4           in rulemaking, an employer is authorized to obtain any criminal  
5           history background records maintained by the Bureau pursuant to the  
6           following:

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

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

21          3. An employer may accept a criminal history background report  
22          less than one (1) year old of a person to whom such employer makes  
23          an offer of employment. The report shall be obtained from the  
24

1 previous employer or contractor of such person and shall only be  
2 obtained upon the written consent of such person; and

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

8 C. 1. If the results of a criminal history background check  
9 reveal that the subject person has been convicted of, pled guilty or  
10 no contest to, or received a deferred sentence for, a felony or  
11 misdemeanor offense for any of the following offenses in any state  
12 or federal jurisdiction, the employer shall not hire or contract  
13 with the person:

- 14 a. abuse, neglect or financial exploitation of any person  
15 entrusted to the care or possession of such person,
  - 16 b. rape, incest or sodomy,
  - 17 c. child abuse,
  - 18 d. murder or attempted murder,
  - 19 e. manslaughter,
  - 20 f. kidnapping,
  - 21 g. aggravated assault and battery,
  - 22 h. assault and battery with a dangerous weapon, or
  - 23 i. arson in the first degree.
- 24

1           2. If less than seven (7) years have elapsed since the  
2 completion of sentence, and the results of a criminal history check  
3 reveal that the subject person has been convicted of, or pled guilty  
4 or no contest to, a felony or misdemeanor offense for any of the  
5 following offenses, in any state or federal jurisdiction, the  
6 employer shall not hire or contract with the person:

- 7           a. assault,
- 8           b. battery,
- 9           c. indecent exposure and indecent exhibition, except  
10           where such offense disqualifies the applicant as a  
11           registered sex offender,
- 12           d. pandering,
- 13           e. burglary in the first or second degree,
- 14           f. robbery in the first or second degree,
- 15           g. robbery or attempted robbery with a dangerous weapon,  
16           or imitation firearm,
- 17           h. arson in the second degree,
- 18           i. unlawful manufacture, distribution, prescription, or  
19           dispensing of a Schedule I through V drug as defined  
20           by the Uniform Controlled Dangerous Substances Act,
- 21           j. grand larceny, or
- 22           k. petit larceny or shoplifting.

23           D. An employer shall not employ or continue employing a person  
24 addicted to any Schedule I through V drug as specified by the

1 Uniform Controlled Dangerous Substances Act unless the person  
2 produces evidence that the person has successfully completed a drug  
3 rehabilitation program.

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

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

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